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JURIDICAL FOLKLORE IN ENGLAND  
ILLUSTRATED BY THE CUCKING-STOOL



# Juridical Folklore in England Illustrated by the Cucking-Stool

by

JOHN WEBSTER SPARGO

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*Whoso keepeth his mouth and his tongue  
keepeth his soul from trouble.*



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## PREFACE

WHEN SOME years ago my curiosity was aroused by conflicting statements concerning the function and origin of the cucking-stool or ducking-stool, I began collecting materials in a desultory way wherever I chanced upon them. Press of other matters made it impossible for me to devote more than an occasional hour of recreation to the subject. As my collectanea grew, so did my curiosity, until finally I decided to see what I could learn by trying to fit together the unpromising pieces of my jigsaw puzzle. The results surprised and interested me, as I hope they will surprise and interest the reader.

Since sousing scolding women in the water had seemed a peculiarly English punishment, I first examined instances of that punishment in England. Scotland came next because of a somewhat analogous device associated with penance in the kirk. The trail of this led back into the Middle Ages, as did most others. In spite of the conviction of earlier scholars that the origin of the cucking-stool was not to be sought outside England, I decided to find out what the Continent knew about such things, with unexpectedly gratifying results. Since the swimming of witches was fairly well known in the sixteenth and seventeenth centuries, the subject of ordeals was touched upon, as well as the punishment of women by drowning. With a Continental background well established, it now became desirable to find out why the punishment of bakers and brewers—mostly men—and later of prostitutes, on the Continent as well as in England, became gradually restricted almost exclusively to scolding women. The reason is found in a venerable tradition, common to Western Europe but developed especially in England, concerning the deadliness of sins of the tongue, sins of such consuming heat that the soul will be lost unless they be speedily quenched. Certain considerations respecting mechanics and linguistics then demanded attention before my conclusions could be put intelligibly before the reader,

Many forbearing friends have been good enough to speculate with me on one aspect or another of the chase. Vernam Hull, Henning Larsen, Sanford Meech, Henry Allen Moe, Ernest Simmons, and Archer Taylor have lent practical aid. To the Harvard College Library, the University of Chicago Library, the Newberry Library, the Northwestern University Library, to the British Museum and the Bibliothèque Nationale, I am indebted for the use of books. Mr. Guy Parsloe of the Institute for Historical Research kindly allowed me to see his invaluable index of English historical periodicals while it was still in manuscript. Without the vast resources prodigally supplied in the *Oxford English Dictionary* I should have been helpless. As it is, I hope that I have been able to maintain a precarious balance perched at a dizzy height on the solid shoulders of the Oxford editors. The late George Lyman Kittredge vigorously maintained his interest in my work for many years.

J. W. S.

Evanston, Illinois

October 3, 1942

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JURIDICAL FOLKLORE IN ENGLAND  
ILLUSTRATED BY THE CUCKING-STOOL



## ENGLAND

The iij<sup>th</sup> of October 1561 Johan Twychan the daughter of hew Twichen of Exon was carried to the Cuckyng stoole & there washed for a scolde for that she called her father thesse & her mother whore, and for the w<sup>ch</sup> was banyshed never to dwell more w<sup>th</sup> in the Countie of the City of Exon vpon peyne to be whipped at the Cartes tayle & to be further punysshed by the descrecion of the Justices. . . .

The viij<sup>th</sup> of october 1561 Agnes the wyffe of John Jones beinge accused by the verdycte of xvij men at the last generall sessyons for her skoldynge was vpon her submyssyon released of the punyshment of the cooking stoole vpon the condicion that efer she at any tyme hereafter be fownde faultye in the foresaid cryme or to be any tyme vnquiet emonge her neigboures or other honest personnes that then she to be sent to the cooking stoole w<sup>th</sup> out redempcion & to be further punyshed as her deservyng shall requyre wthout redempcion. At which tyme also Rychard Lymbeere barber & his wiffe & william hunt & his wyffe & Agnes Trelew who the foresaid Agnes Jones hathe w<sup>th</sup> her wordes miche anoyed & offended were called before the foresaide m<sup>r</sup> maior & the Justyces and by order taken the said Agnes asked forgiveness & desyred there good will as also the saide parties asked her good will.<sup>1</sup>

On August 28, 1563,

Robt. Tryll of Norwich, calendarer, agcd 50 or thereabouts, deposes that when Bennett Goodwyn was judged to be had to theucking stool with a paper on her head and then to be ducked on Saturday, 18 July, and when she was brought to where the punishment should have been executed, one Robert Loydes, after that Mrs. Aldriche had talked with the said Bennett, did twitch off the paper that she had on her hat and did cast it into the river about two or three yeards from the bank side.<sup>2</sup>

<sup>1</sup> From the Act Book of the Chamber of the City of Exeter, 1559-1588, ed. W. J. Harte, in *Transactions of the Devonshire Association for the Advancement of Science, Literature, and Art*, XLIV (1912), 221.

<sup>2</sup> *Depositions Taken before the Mayor and Aldermen of Norwich, 1549-1567*, ed. Walter Rye (Norwich, 1905), p. 73 (Norfolk and Norwich Archaeological Society).

On Tewsday being the xix day of this monthe of August [1572] — Downing wyfe to — Downinge gravemaker of this parysse she was sett on a new cukking stolle made of a grett hythe and so browght a bowte the markett place to Tames brydge and ther had iij Duckinges over hed and eres becowsse she was a common scolde and fyghter.<sup>3</sup>

On July 16, 1572, at Norwich,

Jone Mason for skolding and other misbehavyour was sett on the cokyngstole at Jackes Pitt and there duckyd.<sup>4</sup>

At Southampton, in 1576,

Item we present that there wantith in this towne a cocking stolle for the punishment of harlots which is very necessarie to be set uppe whereof we praye redresse and that yt maye be set upon the town dytches wher yt hath heretofore accustomid to be sett.<sup>5</sup>

This most lamentable lack went on, for at the same place in 1579,

Item we present that theare ys a greate lack of a Cucking stoole upon the ditches as yt hathe bin heretofore accustomid and usid for the punishment and terrour of harlots, skowlde, and suche malefactors wch we dessire may be renued and continued for the punishe-  
ment of suche as deserve the same.<sup>6</sup>

Thomas Marshall shall bring for scandalous wordes his wifie to the Cockstoole and cause her to be dowcked before all hallowtide on payne of 40 s.<sup>7</sup>

<sup>3</sup> Quoted from the Kingston Parish Register in *Proceedings of the Surrey Archaeological Society*, II (1860), 91. This "grett hythe" I take to be a large beam or plank—the sort of timber of which docks were made.

<sup>4</sup> *Records of Norwich*, ed. William Hudson and John C. Tingey (Norwich and London, 1906-10), II, 185.

<sup>5</sup> "The Court Leet of Southampton," ed. F. J. C. Hearnshaw, in *Papers of the Hampshire Field Club and Archaeological Society*, V (1904-06), 222.

<sup>6</sup> *Southampton Court Leet Records*, ed. F. J. C. and D. M. Hearnshaw (Southampton, 1905), p. 174. In 1576, 1577, and 1604 similar complaints were made; see pp. 141, 162, 401.

<sup>7</sup> Oct. 10, 1594. From a manorial court record of Middleton, Lancashire, printed by Robert Collyer and Joseph H. Turner, *Ilkley Ancient and Modern* (Otley and Leeds, 1885), p. 127. Two other cases are mentioned at p. 131. We do not know what happened; certainly a sensible man would pay the shillings, if he had them, in the cause of domestic peace.

At Gillingham, Dorsetshire, on April 27, 1603, the jury

... praesentant quod Anna White est communis Objurgatrix, Rixatrix et Garrulatrix ad maximam disturbacionem vicinorum ibidem: Ideo preceptum est Constabulariis ac Decenariis Decenie de Motcombe prefatam Annam apprehendere et ipsam punire per corpus suum in le Scoldeing Stole in Decenia de Gillingham citra proximam curiam legalem sub pena utriusque eorum in defectu x s. Et quod omnes inhabitantes ibidem ad eos intendendos et auxiliandos sint cum requisiti fuerint sub pena cuiuslibet eorum in defectum xij d.<sup>8</sup>

Finally, at Richmond, in the North Riding of Yorkshire, on January 12, 1610, one woman is promised constant solicitude.

Forasmuch as Anne wife of John Sweetinge of Midleton Whernhowe is a notorious scold, a common drunkard and a woman of very lewd and evell behavior emongst her neighbours . . . a warrant &c. to bring her &c.: And further that when and how often soever as she shall offend in scolding she shalbe by the Constable of Midleton ducked, and if she be found drunken that she either paie her fine according to the Statute, or be sett in the stockes by the space of vi houres; and Will. Bell and Rich. Best are commaunded to see this order executed as nede shall require.<sup>9</sup>

These records of the decisions of local courts, selected at random, show that from Devonshire to Yorkshire during the last third of the sixteenth century, women were punished for various offenses by being ducked in water in something called a *cucking-stool*. The punishment was a familiar one to all England through some centuries, and as a commonplace among the people was celebrated in a black-letter ballad printed at London in 1615 or earlier, entitled *The Cucking of a Scould*. This termagant, the ballad tells us, was a wedded wife

<sup>8</sup> Gillingham Court Rolls, Hock term, 1603, in *Notes and Queries for Somerset and Dorset*, V (1897), 121. This whole imposing structure of fines would fail to be built, of course, if Anna turned over to the constables the ten shillings—or a little more—which they were to pay if she were not publicly punished. On page 233 as above appears for April 26, 1620, the record that several women were presented as “perturbatrices et vexatrices vicinorum suorum, . . . ac communis molestatrices et seminatrices litium et discordiarum inter vienos suos.” Here the penalty was that the women named “laventur (Anglice ducked).”

<sup>9</sup> *North Riding Quarter Session Records*, ed. J. C. Atkinson (1884), p. 180. The *cockinstole* was missing here in 1606 (*ibid.*, p. 56).

some seventeen years old, but already she was "a dainty Scould in graine." A misunderstanding about the ownership of a dish-clout, the waking of her pet dog as he slept in the sun, was enough to set her tongue to clamoring; but when she fell upon the constable, that strong arm of the law haled her off on a market day at the head of a procession—

Then was the Scould her selfe,  
 In a wheele-barrow brought,  
 Stripped naked to the smocke,  
 As in that case she ought:  
 Neats tongues about her necke  
 Were hung in open show;  
 And thus vnto the cucking stoole  
 This famous Scould did goe.

Then fast within the chaire  
 She was most finely bound,  
 Which made her scold excessiuely,  
 And said she should be drown'd.  
 But euery time that she  
 Was in the water dipt,  
 The drums & trumpets sounded braue,  
 For ioy the people skipt.

Six times when she was duckt  
 Within the water cleare,  
 That like vnto a drowned Rat,  
 She did in sight appeare.  
 The Justice thinking then  
 To send her straight away,  
 The Constable she called knaue,  
 And knau'd him all the day.

Upon which words, I wot,  
 They duckt her straight againe  
 A dozen times ore head and eares:  
 Yet she would not refraine,  
 But still reuil'd them all.  
 Then to't againe they goe,  
 Till she at last held vp her hands,  
 Saying, I'le no more doe so.

Then was she brought away,  
 And after for her life,  
 She neuer durst begin to scould  
 With either man or wife.  
 And if that euery Scould  
 Mighthe haue so good a diet,  
 Then should their neighbours euery day  
 Be sure to lue in quiet.<sup>10</sup>

The legal records do not often approach this eloquent picture of the actual proceedings, for although we have no precise description of the instrument itself, we do have a good idea of what went on, with the troops of spectators drummed up on a market day by the procession, the culprit herself decked with tongues, a bundle of straw carried before her as a symbol of contempt—this appears in a stanza not quoted—and at last the immersion of the scold while trumpets blared and the people skipped for joy, in spite of the victim's precarious state. We note that the woman was *ducked* in a *cucking-stool*, and the title of the ballad is *The Cucking* [not ducking] of a *Scould*; that is, here *to duck* and *to cuck* are synonymous.

More of the mob spirit is seen in the attempt of a crowd of rascals at Calne, Wiltshire, to execute the justice of the *cucking-stool* upon a woman whom, we gather, they did not particularly admire. Thomas Wells and Agnes, his wife, complained at the Wilts Quarter Sessions in 1618 that on May 27 of that year, at Quermerford in Calne,

Aboute noone came . . . from Callne to Iwermerford [a] . . . drummer named W<sup>m</sup>. Watt & wth him three or fower hundred men, some like soldiers armed with peices and other weapons, & a man riding upon a horse, haveing a white cap upon his head, two shin-

<sup>10</sup> *A Pepysian Garland*, ed. Hyder E. Rollins (Cambridge, 1922), No. 122, pp. 72 ff. The woodcut to which Professor Rollins refers is unfortunately a conventional figure rather than the scene of action—Vol. I, p. 454, of the ballads in the Pepys library. Another ballad of about 1620 informs us that

She that by scolding still pays all her debts,  
 To the ease of her belly, sore sicke of the fret,  
 May gallantly on the Cucking-stool ride . . .

—“A Mad Crue: Or, That shall be tryde,” in *The Pepys Ballads*, ed. Rollins, I (1929), 193.

inge hornes hanging by his ears, & a counterfayte beard upon his chine made of a deares tayle, a smocke upon the top of his garments, & he rode upon a red horse with a paire of potts under him & in them some quantityc of bruinge graines, wch he used to cast upon ye presse of people, rushing over thicke upon him in ye way as he passed. And he & all his compayne made a stand when they came just against thise examinates howse, & then ye gunnes shott of their peices, pipes & hornes were sounded, together with cowbells & other smaller bells, wch the company had amongst them, & rames hornes & buckes hornes carried upon forkes, were then and there lifted up & showen, & during ye stand, some of ye company . . . made towardes [the] howse & they both fearing least some violence & injurye should be offered them—ye rather because at their bensing towardses theirhowse . . . divers stones were throwen in at their windowes whereof some did hit both of them. Thomas Wells, ye husband, locked ye street doore & locked his wife into his chamber where she lay, & ye compayne pressinge hard against his howse he opened ye streete doore to see whether he could psuade ye Companye to departe from his howse, & psently ye parties above mentioned and divers others rushed in upon him into his entry & thence into his hall & brake open his chamber doore upon his wife, & she offeringe to escape from them by climinge a paire of staires to goe up into an upper room, W<sup>m</sup>. Wellwin plucked her down by ye heeles, beinge halfe up ye staires & then he and the rest tooke her up by ye armes & legges, and had her out through the hall into ye entrye, where being a wett hole they threw her downe into it & trod upon her & beried her filthily with durt & did beate her blacke and blewe in many places with an intent as those examinants have credibly heard, to have had her, viz. Agnes out of their howse to ye horseman & to have sett her up behind him to carry her to Callne & there washe her in the cuckinge stoole & if she would not be still & sitt quietly, then to stuffe her mouth with greines.<sup>11</sup>

<sup>11</sup> *Wiltshire Archaeological and Natural History Magazine*, XLV (1930-32), 498, from B. H. Cunnington's article in the *Wiltshire Gazette* for January 1, 1931, p. 3; referred to also by A. E. W. Marsh in his *History of . . . Calne* (Calne, 1904), p. 100. This full description of a skimington implies that the neighbors regarded this flower of virtue as being guilty of adultery or of shrewish behavior or both. What the result of the complaint was we are not told, but we can be grateful for this vivid description of folk justice in operation, on which see Jacob Grimm, *Deutsche Rechtsaltertümer*, ed. Heusler and Hübner (4th ed., Leipzig, 1899), II, 318 ff.; Brand Hazlitt, *Faiths and Folklore* (1905), II, 551; Ruth Firor, *Folkways in Thomas Hardy* (Philadelphia, 1931), pp. 238 ff. According to a correspondent of Thomas

Here is demonstrated an agreement between folk belief and law which takes us far back into an age when the two were still one. Both the folk and the law felt that ducking a recalcitrant woman would improve her manners and make her a normal member of the community. It is an old idea, and dies hard. After all, it is but an overt demonstration of the steady pressure of the folk, or of society, if one prefers, upon the individual to force him to conform to the accepted patterns of conduct, that steady pressure which is with us today and will be with us as long as human nature endures. Everyone who has felt it—and no one has not—will agree that it is effective. Whether the particular manifestation of it in the treatment of delinquent women is effective is another matter, although it should be said that other bodies than irresponsible mobs have tried the cold-water cure for them.

That mobs did have something to do with the execution of justice is shown by a queer bit of local lore picked up by the Duke of Stettin at Rochester in 1602, where, on October 1,

We saw before the gate of the town a very large tree or beam, with a seat made upon it, reaching very far over the water. They call it the wooden horse, and the bad wives are obliged to ride on it into the water. We were further told that in England every citizen is bound by oath to keep a sharp eye at his neighbour's house, as to whether the married people live in harmony, for though in this realm much liberty is granted to the women, no licentiousness is allowed them. If by the neighbourhood any matrimonial differences are noticed, both parties are ordered to appear before the magistrate, who inquires on which side lies the cause of disharmony. If the husband is an unfriendly or obstinate fellow, he is condemned to pay a fine in money; if, however, the mischief is on the wife's side, the husband is likewise punished for not having been able to keep up his authority, but the wife is placed on the above-mentioned chair and ducked three times into the water up to the neck by the boys who roam about in the streets. When she is well drenched and well shamed, she returns home to her husband, who after the custom of

Wright's, in 1800 a cobbler who had beaten his wife was taken for a skinny ride and soured repeatedly in the Tweed—*Archaeological Album* (1845), pp. 54 ff.

the country gives her comfort by getting her dried with warm clothes, especially in winter time.<sup>12</sup>

The distortions in the picture of English life in the seventeenth century, such as the curious interpretation of the duties of householders, make us wonder whether other matters are accurately reported. The constables were empowered to press into service any men they needed in the execution of justice, a power which has descended implicitly if not expressly to the constables' modern representatives, the police, in the maintenance of public order and the apprehension of criminals. We are not often told whether boys were employed, but in 1637, 2s. was paid "to a boy for whippinge John ffoxe" at Congleton, Cheshire.<sup>13</sup>

The instrument used is our particular interest here. It seems to have been a chair—note that the restriction of *stool* to an armless and backless seat is relatively modern—in which scolding women and harlots were placed and then ducked in water. Called *cucking-stool* or *scolding-stool* in the material thus far quoted, it is best known today as the ducking-stool, the term which in the course of the seventeenth and eighteenth centuries gradually superseded the older one. As we shall see later, *cucking-stool*, *cuckstoole*, and variants is the older word, the first appearance of *ducking-stool* recorded in the *Oxford Dictionary* being 1597, although forms somewhat unreliably reported from 1558 and 1559, *duckstoole* and *duckinge stoole*, were available.<sup>14</sup> This variety of punishment was not neglected by the antiquarian scholars of the nineteenth century, as several studies attest.<sup>15</sup> They collected all the information they could find about

<sup>12</sup> "Diary of the Journey of the most illustrious Philip Julius, Duke of Stettin-Pomerania . . . through . . . England, 1602," ed. and trans. by Gottfried von Bülow and Wilfred Powell in *Transactions of the Royal Historical Society*, V s. VI (1892), 65. The translation, which I reprint above, is accurate. 'Tee or beam' renders 'Baum oder Balken,' 'wooden horse' 'ein holzern Pferd,' and so on.

<sup>13</sup> Robert Head, *Congleton Past and Present* (Congleton, 1887), p. 64.

<sup>14</sup> Brushfield (see next note), pp. 218, 219, from William Kelly in *Reports of Leicester . . . Literary Society for 1855*, p. 47, and Brand's *Popular Antiquities*, III (1842), 104.

<sup>15</sup> I mention here only the more elaborate studies. Reference to some punishment by exhibition is likely to appear in any of the very numerous local histories or in

the punishment and its history, including an imposing list of references to it in English literature from the time of Chaucer and before through the eighteenth century. Although it will be necessary to cite some few of these in the course of this discussion, in the main the purpose here is to study only the early history of the cucking-stool or ducking-stool and punishments possibly related to it. As to its ultimate origin, these scholars are agreed that it is native to England, an opinion first expressed among them by Thomas Wright and accepted by Brushfield, whose study is the most comprehensive yet made. Of the same position of mind is the greatest of all antiquarians of the law, Sir Edward Coke, who discusses the matter with his wonted combination of erudition, credulity, and fantastical

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articles about manors, courts leet, and so on. Since entries in local records were made not to convey information about the means of punishment but to record payments and decisions, they convey little information as to what those means were. The reader will not be interested in the bibliographical puzzles which had to be solved before the information given in the articles listed here could be used. Among the numerous virtues of these antiquarians one does not expect to find bibliographical accuracy and scrupulousness. Thomas Wright, *The Archaeological Album* (London, 1845), pp. 49-54; Mark S. O'Shaughnessy in *Transactions of the Kilkenny Archaeological Society*, II (1852), 254-263, F. A. Carrington in *Wiltshire Archaeological and Natural History Magazine*, I (1854), 68-90, Llewellyn Jewitt in *The Reliquary*, I (1860-61), 145-155 (reprinted verbatim with no indication of source in *Green Bag*, X, 1898, and XI, 1899); best of all is the paper by Thomas N. Brushfield in the *Journal of the Architectural, Archaeological, and Historical Society of Chester*, II (1864), 203-234, which can be supplemented by his *collectanea* in my possession (Dr. Brushfield, an antiquary of the old school and best known for his bibliography of Sir Walter Raleigh, died November 28, 1910, in his eighty-first year); William Andrews in five papers which largely duplicate one another and draw heavily upon Jewitt's and Brushfield's articles. (1) *Punishments in the Olden Time* (London [1881]), pp. 12-22, (2) *Old-Time Punishments* (Hull and London, 1890), pp. 1-38, (3) *Punishments of the Past*, in *Bygone Leicestershire* (Leicester, 1892), pp. 159-175, (4) *Some Old Lancashire Punishments*, in *Bygone Lancashire*, ed. Ernest Axon (London, 1892), pp. 157-164, and (5) *Bygone Punishments* (London, 1899), pp. 243-275, this last reprinted at London, 1931, pp. 226-256 (there is also a French translation called *Les châtiments de jadis*, Paris, 1902); S. M. Morris in *Proceedings of the Shropshire Archaeological Society*, IX (1886), 81-105. Brief but informative discussions are given in such works as John Brand's *Observations on Popular Antiquities*, ed. Henry Ellis (London, 1842), III, 52, the later edition of the same work by W. C. Hazlitt under the title *Faiths and Folklore* (London, 1905), I, 158 f., Robert Chambers's *Book of Days* (London and Edinburgh, 1869), February 1, and the various editions of James Orchard Halliwell-Phillipps's *Dictionary of Archæo and Provincial Words* (London, 1847, and after). The indexes of *Notes and Queries* open the way to much information.

etymological speculation in the third volume of his *Institutes* at fo. 219.

The *Trebuchet* or castigatory, named in the statute of 51 H. 3, signifieth a Cucking stool, and *Trebuchet* properly is a pitfall or downfall, and in law signifieth a stool, that falleth down into a pit of water, for the punishment of the party in it. And *Cuck* or *Guck* in the Saxon tongue, signifieth to scould or brawl (taken from the Cuckhaw, or Guckhaw, a bird, *qui odiose jurgat & rixatur*) and *Inge* in that language because she was for her punishment sowsed in the water; and others fetch it from Cuckquean, i. *pellex*. Now for that the Judgement to the Pillory or Tumbrell (as it hath appeared before) doth make the Delinquent infamous, . . . the Justice of Assize, *Oier* and *Terminer*, Gaol-delivery, and Justices of Peace, would be well advised before they give judgment of any person to the Pillory or Tumbrell, unlesse they have good warrant for their judgement. Fine and imprisonment for offences finable by the Justices abovesaid, is a fair and sure way. And it is to be observed that those kinds of punishments of Pillory, &c. have been given by Acts of Parliament in cases of enormous and exorbitant offences. . . .

We may feel inclined to smile at these remarks of the learned judge, but we must remember that he had no *Oxford Dictionary*, no "Saxon" dictionary, for Somner had not yet compiled the first, no Macgillivray or Yarrell on British Birds to consult. Anyhow, no Anglo-Saxon word like *guckhaw* or *cuckhaw* is known now. If Coke meant the cuckoo, the Anglo-Saxon word for that is *ȝēac*, which phonologically might produce *yeke*, a Middle English term for the cuckoo which actually appears as late as the fourteenth century. *Inge*, moreover, is not recorded in Old English, and when it does appear in Middle English as a loan from Old Norse, it means, not 'water,' but 'meadow.' If on the other hand we should feel tempted to follow Coke in the association with "Cuckquean, i. *pellex*," here again we have no better fortune, because this term for a female cuckold would seem to be based upon the *cuck-* in *cuckold*. This last word brings us back full circle to the bird Coke probably meant, for the best etymon yet proposed for *cuckold* is an Old French form of the word for cuckoo, *cucu*.

An association between English *cuckoo* and the *cuck*- in *cucking-stool* is decidedly far-fetched, *cuckoo* being merely an echo of the call of the bird itself, for apparently Greeks and Romans and Frenchmen and Germans and Englishmen have preferred this type of word to inherited forms which had undergone the normal phonetic changes. German *Gauch*, for example, was supplanted by *Kuckuk*, a loan from French. French also seems responsible for the supplanting of the rare Middle English *yeke* by the now prevalent *cuckoo*. This word *cuckoo*, the *Oxford Dictionary* delightfully tells us, we use today because "the annual lessons given by the bird have prevented the phonetic changes which the word would normally have undergone." Coke's effort to relate the *cucking-stool* to the *cuckoo*, then, is valid only in that it may be said of the bird and of the occupant of the chair that each "odiose *jurgat* & *rixatur*"—scarcely adequate evidence to justify relating them, since it is not easy to perceive how any reasonable association could be made between the soft notes of this bird, or the bird itself, and a chair designed to souse scolding women in the water. The fact that the first syllable of the words *cuckoo* and *cuck-stool* (*cucking-stool*) are identical, however, does indeed render nugatory any testimony that place-names might give in our search for the meaning of the *cucking-stool*. The bird was ubiquitous in Britain, and any place-name containing the syllable may therefore be due to the *cuckoo* quite as well as to the *cucking-stool*.<sup>16</sup>

Coke's two suggestions being useless, we must follow the word back as far as we can, for although we cannot hope, with Isidor of Seville, to arrive ultimately at the word as originally revealed by divine intelligence, we can at least exhaust the earliest possibilities insofar as they have come down to us. The numerous occurrences which tell nothing of the instrument itself obviously cannot assist us to get at the ultimate meaning, and they will be passed over for the moment in silence. I quote a few which may point the way.

<sup>16</sup> Or to the cock. See the remarks by Henry Harrison and F. Prideaux in *Notes and Queries*, Ser. IX, IX (1902), 155, 257, and by T. A. Jenkins in *Modern Philology*, X (1912-13), 443-444.

Fourpence was paid "for hallinge the duckinge stoole to ducke the cookes wyefle and James Coys wyefle" at Plymouth in 1599/1600. William Harrison is forthright enough in telling us that in 1577 "Rogues and vagabonds are often stocked and whipped; scolds are ducked upon cuckingstooles in the water," and so are the parish records of Darlington, county Durham, for in 1612, Maiie, wife of William Adamson, was sentenced to be punished "for Scoldinge according to law, viz. ducked upon the cuckstoole"; and in 1619, another woman,

a common scold to the common nuisance of the neighbours and against the peace of our Lord the King . . . shalbe furthwith sett on the Cuckstoole and ducked according to the custom of the Borrough.

Two years later (1621) appears the entry, "the wife of John Browne a common scould to be cucked."<sup>17</sup>

Under date of May 3, 1576, a court roll of the manor of Bottesford, Lincolnshire, lays down the general rule:

We lye in payne that any woman that is a scould shall eyther be sett upon the Cuk stoll and be thrise ducked in the water, or els ther husbands to be am'cied [fined] viij<sup>l</sup> viij<sup>d</sup>, as well one p'lie as the others.<sup>18</sup>

In 1562, at Norwich, punishment was decreed for

A Woman for Whoredom to ryde on a Cart, with a Paper in her hand, & Tynklyd with a Bason, & So at one a Clock to be had to the Cokyng-Stool & ducked in the Water.<sup>19</sup>

A few years earlier Charles Bansley had published an egregious piece of doggerel entitled *A Treatysse shewing and de-*

<sup>17</sup> *Plymouth Municipal Records*, ed. R. N. Worth (Plymouth, 1893), p. 141; cf. p. 146, 1606-07, when it cost 2s. 6d. to duck a woman "and for a swifting gardell & Coides to make her fast." Harrison's *Description of Britaine and England*, ed. F. J. Furnivall (London, 1877), p. 228 (New Shakspere Society); W. Hylton D. Longstaffe, *History . . . of Darlington* (2d ed., London, 1909), p. 286.

<sup>18</sup> Brushfield, p. 220, from *Gentleman's Magazine*, N. S. X (1861), 442.

<sup>19</sup> From the Court-book of Fyebridge, Norwich, quoted by Francis Blomefield, *A History of Norfolk* (Norwich, 1745), II, 739. Note also under year 1597: "Margaret Grove a common Skould to be Canied with a Bason rung before her to the Cucke-Stool at Fyebridge & there to be 3 times ducked."

*claring the prye and abuse of women now a dayes*, in which appear the verses:

Ducke, Jelot, ducke; ducke pictye minions,  
beware the cokingstoole:  
Ducke, galant tickers, wthy shame ynoughc,  
your wanton corage for to cole.<sup>20</sup>

At London in 1543 actual instances occurred:

This yeare the mayor punished many harlotes of the stewes by dobbing in the Thames onto a cooking stool at the Thre Cranes in the Vintrie.<sup>21</sup>

Similar to this, and again showing what was done, is the sentence at Sandwich, Kent, in 1534. Two women were banished for whoredom, and

if they return, one of them is to suffer the pain of sitting over the coqueen stool, and the other is to be set three days in the stocks, with an allowance of only bread and water, and afterwards to be placed in the coqueen stool, and dipped to the chin.<sup>22</sup>

These dozen or so clear statements as to what happened when the punishment in the cucking-stool was used can be supplemented to my knowledge by but three instances of any kind earlier than the sixteenth century: one at the end of the fifteenth, one in the middle of the fifteenth, and one in the early years of the fourteenth century. The first is merely the implication drawn from the entry in the municipal records of Plymouth in 1486:

payd to y<sup>e</sup> men y<sup>t</sup> made clen the pyt ffor the cokeyng stoll v<sup>d</sup>

In the second, at Beverley, in the East Riding, just north of Hull, in 1486, we are informed that a laborer was paid four-pence for a day's work cleaning the common sewer next to the "cuxstolepitt"; and the third appears in an anonymous satire

<sup>20</sup> London, n.d. [ca. 1550]; I use the reprint issued by John Payne Collier (London, 1841), p. 8.

<sup>21</sup> Charles Wriothesley, *Chronicle of England during the Reigns of the Tudors, 1485-1559*, ed. William D. Hamilton, I (London, 1875), 145 f. (Camden Society).

<sup>22</sup> William Boys, *Collections for an History of Sandwich* (Canterbury, 1792), p. 684; Brushfield, p. 218. This is the unique appearance of the "coqueen stool."

on the people of Kildare written about 1308, in which one stanza runs:

Hail be ge brewesters wiþ gur galuns,  
 Potels and quartes, ouer al the tounes.  
 ȝur þowmes berriþ moch awai, schame hab þe gyle;  
 Beþ iwar of þe coking-stol, þe lack is dep and holl.  
 Sickerlich he was a clerk  
 That so sleilich wroȝte þis werk.<sup>23</sup>

The number of misdemeanors for which women could be punished by ducking in water is increased by one. To scolding and harlotry, most of the instances being for scolding, we can now add this single early instance of female brewers, of alewives being sentenced to the ducking, presumably because of brewing beer too small.<sup>24</sup>

For the moment, we shall overlook the variations in the term, since in the past they have been regarded as being merely orthographic. Perhaps even *coqueen stool*, the unique occurrence at Sandwich, will give little difficulty, for rapid pronunciation of what seems to have been the basic form *cucking*—might to ears unfamiliar with it have much the same sound as *coqueen* pronounced rapidly. Sometimes Americans pronounce the *-ing* in the final unaccented syllable of present participles much as the *-een* in *queen* is pronounced. It is true that my principle of inquiry here, which is to omit instances which do not make clear the purpose for which the instrument is used, will necessarily exclude some forms which might be valuable for the purposes of pure etymology but which are not clearly defined in their texts. I hope that the necessity of this method

<sup>23</sup> *Plymouth Municipal Records*, ed. R. N. Worth (1893), p. 89. George Pouason, *Beverlac* (London, 1829), I, 221 "Et sol' i laboř' a mundacone cois sewer jux, cuxstolepitæ exitu aque iumæ j diem mi d" A "cukstoole pitt" was still there in 1556 (p. 312). Cf. Brushfield, p. 215. Kildare W. Heuser, *Die Kildare-Gedichte* (Bonn, 1904), p. 157 (Bonner Beiträge XIV). Thomas Wright, *Reliquiae Antiquae* (London, 1842), II, 176, gives slightly different readings. See John Edwin Wells, *A Manual of the Writings in Middle English* (New Haven, 1916), pp. 232, 799, and the Supplements. The town of Kildare is some thirty miles southwest of Dublin. Ducange notes *sv. brauaria* that brewing was a woman's occupation in Scotland and England and Germany.

<sup>24</sup> See *Oxford Dictionary*, s.v. *-ster*.

will become apparent later, when the reader perceives the confusion which would otherwise ensue. In due time, all early forms which are soundly attested, and some which perhaps are not, will have their share of attention.

One Geoffrey, a Dominican of Norfolk, provides about 1440 an interesting and striking definition. In the first place, he confirms the general impression which we have thus far of the instrument by saying that a *Cukstole* is "for flyterys, or schyderys . . . *Turbuschetum, cadurca*."—That is, "for fliters [i.e., quarrellers or scolders] or chiders . . . a trebucket, *cadurca*." This definition is repeated under *Kukstole*. A little later we shall turn to the trebucket and attempt to find out what it was; but what of *cadurca*? The meaning in Classical and later Latin does not fit here; in fact, no meaning of the term in any gloss accessible to me makes sense. Luminous meaning appears at once, however, if we emend *cadurca* to *cadūca*, 'that which falls, the falling thing,' a meaning which agrees well with other materials here set forth.

It is Geoffrey's second definition which has caused some confusion. Just above *Cukstole* the entry is "Cukkynge, or pysynge vessel. *Scaphium*."<sup>25</sup> Now, if a modern lexicographer were to suggest that because *light* and *delight*, nouns, *light* and *delightful*, adjectives, and *alight*, verb, all have *light* in a syllable, the forms must have a common meaning, that lexicographer's judgment would become seriously suspect; yet this sort of thing is what has happened in the case of Geoffrey's two forms, *cukstole* and *cukkynge*. The definition of the latter, Geoffrey reaffirms under *Esyn*: "or cukkyn' or shytyñ' (or voydyn as man at priuy place, . . .) *Stercoriso, merdo, egero*. . . ." On the authority of these last definitions and on two other occurrences in English, the *Oxford Dictionary* recognizes

<sup>25</sup> *Promptorium parvulorum sive clericorum*, ed. Albert Way (3 vols., London, 1843, 1853, 1865) (Camden Society, XXV, LIV, LXXXIX). Under *Cukstole* (which he says is a misreading for *Cukstole*) and *Kukstole*, Way gives useful notes. There is nothing additional in the edition by A. L. Mayhew for the Early English Text Society, E S CII, 1908. *Scaphium* is used here in the same sense as in Classical Latin, 'a chamber-pot.' Before I decided on *cadūca* as a possible emendation, Professor Beeson was kind enough to answer questions on *cadurca*.

a verb *to cuck* equivalent in meaning to the well-established *to cack* from Latin *cacare*, a word which occurs in this sense in most of the languages of Western Europe. One's first suspicion that some scribe may have misread *u* for *a* and created the verb *to cuck* in this meaning through a blunder is allayed when one learns that the etymon given by the *Oxford Dictionary*, Icelandic *kúkr* (there is also a verb, *kúka*) with *u* long, can be supplemented by forms with short *u* in Modern Norwegian, Modern Swedish, and even as close to Great Britain as the Faroe and Shetland Islands, such as Norwegian, Swedish, and Faroe *kukka* for the verb, Faroë *kukkur*, Shetland *kuk* or *kukk* for the noun;<sup>26</sup> and in spite of the absence of the word in this specific meaning in modern English dialects and in Old and Middle English,—*cuc*, adjective, meaning 'quick' in the biblical sense of "the quick and the dead," i.e. "living, *vivus*" is a different word—one must agree that on the evidence the editors of the *Oxford Dictionary* were justified in accepting the verb *to cuck* in this meaning.

As for transferring this meaning to the *cuk-* in *cukstole*, that is another matter, which will have to be reserved for discussion later. At this point I shall bring forward the only bits of evidence I know from original sources which tend to confirm the validity of this transfer, given currency by Way and Brushfield and tentatively accepted by the *Oxford Dictionary*. In the municipal records of Plymouth for the year 1500/or appear these items of expense:

<i>p<sup>d</sup></i> to the pryer of whytfryers for a nelme for ye stokys &	
the skytyng stole	<i>iiij<sup>s</sup> iiij<sup>d</sup></i>
<i>p<sup>d</sup></i> for a chayr to y <sup>e</sup> skytyng stole	<i>vij<sup>d</sup></i>

Possibly significant also is the appearance of the late seventeenth-century instrument at Sandwich. According to an illustration of 1792, it looked much like a privy-chair. This evidence I set down here for whatever it may be worth. My personal opinion is that such a form as *skytyng* is due to variant forms

<sup>26</sup> Alf Toip, *Nynorsk etymologisk Ordbog* (Kristiania, 1919), Jakob Jakobsen, *Etymological Dictionary of the Norn Language in Shetland* (London and Copenhagen, 1928).

of *chiding* as reproduced in the uncertain spelling of the keepers of records in centuries past.<sup>27</sup>

However all this may be, the task in hand at the moment is the assessment of the term as we find it in the earlier records. That evidence is ambiguous. For instance, a municipal code of Preston in Lancashire of the time of King John indicates that a citizen repeatedly defaulting in the payment of a fine of twelvepence for [breaking the assize of] bread and ale shall make some arrangement or go to the *cuckestol*.<sup>28</sup> Here the

<sup>27</sup> *Plymouth Municipal Records*, ed R N Worth (Plymouth, 1893). On page 89 is the term *cokeyng stool* for the year 1486, only fourteen years before the record quoted in my text, and it seems to have been used for ducking, as two men were paid for cleaning the pit for it. This pit was probably filled with water. According to two photographs of this section of the records, which I owe to the good will of Mr Colin Campbell, Town Clerk, the first form is clearly *skytyng*, and the second form, originally the same, has been changed in a hand nearly contemporary or closely imitating the contemporary into something like *skylfyng*. The question is: What did Mr Campbell's predecessor of 1500 try to write down? In view of the forms for *scalfing stool* in Devonshire in 1385 and 1584-85 mentioned below, confusion with such forms may be responsible. *Chydyng stole* or a variant of it, *schydyng-stole*, may have been intended. Note Geoffrey's *schyderys* (above, p 18) = 'chiders, scolders'. See *Oxford Dictionary* s.vv *chide*, *shit* for a demonstration of the ease by which variants of these verbs could approach identity.

The illustration of the one at Sandwich appears in William Boys's *Collections for a History of Sandwich* (Canterbury, 1792), p 690. It has been reproduced by various writers listed in my bibliographical note, page 11, above. It may be pertinent to recall that in 1534 the *cooquen stool* at Sandwich was used both to exhibit and to duck women. Another form, this one more than suspect, must be mentioned here. In the *Archaeological Journal*, III (1846), 232, W S W Vaux says that among the Corporation Archives of the Southampton Courts Leet "there is a presentment in more than one year, that 'there is sad want in this town of a *cacing stool*, for the punishment of scowlids and such like male-factors'". No date is given, but the context seems to imply the fourth decade of the seventeenth century. Hearnshaw's edition of the Court Leet Records stops at 1624, and the continuation from that date onwards has not yet appeared, although it was announced as long ago as 1923. The forms which Hearnshaw gives do not have the *-a-* spelling, and it seems unlikely that it would have appeared so late as 1630-1650 in view of the use at Southampton in these same Leet records of forms spelled with *-o-* and *-u-*. Dr Harry W Giddens and Mr R C Anderson of the Southampton Record Society were kind enough to examine the Court Leet Books of 1625-30, 1633, 1635, 1637-41, 1645, and 1648 at my request, and reported that no forms whatever appear in them. Under date of November 30, 1936, Mr Anderson writes "I think you can safely say that the form 'cacing' does not occur between 1625 and 1648, in fact I find no reference to the apparatus at all during this period. The quotation given by Vaux looks to me like a bowdlerised version of the entry of 1579. My own feeling is that 'cacing' is probably merely a misprint". Thus we lay the ghost of a form which never existed anywhere save in Vaux's imagination.

<sup>28</sup> Item, si Burgensis sit in misericordiam de pane et cervisia semel vel secunda

difficulty is of the sort most frequently encountered in such records, of whatever date. We have merely a mention of the word and of the misdemeanor for which the punishment is ordered. More precise is the instance which I reproduce in full, since Brushfield got the form wrong and the passage is of interest for other reasons, as we shall see. The writer is William Borlase, whose *History of Cornwall* was published in 1758.

Among the punishments inflicted in Cornwall of old time was that of the cocking-stool, a seat of infamy where strumpets and scolds, with bare feet and head, were condemned to abide the derision of those that passed by, for such time as the bailiffs of manors, which had the privilege of such jurisdiction, did appoint. "This jurisdiction was granted, says Hals, MS. Hist. of Cornwall (or rather at an inquisition declared to belong) to the manor of Cotsford Farlo, in the parish of St. Wenn, Cornwall, in these words, lately to be seen in the records of the Exchequer: "Maner. de Cotsford-farlo, alias Lancorla in St. Wenn-moor, temp. Hen. 3. Quia per objurgatrices et meretrices multa mala in Manerio oriuntur, lites, pugnes, defamationes et alie multe inquietationes per earum putasias (that is, Putagia, acts of fornication, Spelm. Glossar.); igitur utimur de eisdem quod cum capte fuerint, habeant judicium de Cocking-stool, et ibi stabunt nudis pedibus, et suis crinibus pendentibus dispersis tanto tempore ut aspici possint ab omnibus per viam transeuntibus secundum voluntatem Balivorum nostrorum capitalium."<sup>29</sup>

These scolds and harlots who endured the punishment of the "Cocking-stool" by standing "there" barefoot, with their hair streaming down, in full view of passers-by as long as the bailiff wished, quite obviously were not ducked; they *stood*. Why "Cocking-stool," then? we ask, with no answer; even if they merely remained there, we still see no reason for *stool*. The equation two centuries later at London of a "Cockyng-stole"

vel tercio erit in misericordia de xii denariis, quartem autem vice, faciet meliorem finem quem poterit vel ibit at cuckestolam.—Brushfield, pp. 211 f., from Thomas Whitaker's *History of Richmondshire* (London, 1823), II, 422. I use the better text, ed. Mary Bateson, in *English Historical Review*, XV (1900), 498 f. It is referred to also by H. W. Clemesha, *History of Preston* (Manchester, 1912), p. 48.

<sup>29</sup> Brushfield, p. 213, referring to Borlase, I, 303, gives only a translation of the Latin passage; somehow he made the form into *Coking Stole*, and the *Oxford Dictionary* quotes it thus.

with the pillory may or may not be significant. In an "assize of dyvers artificers" of the City of London in 1468, if a brewer who brews short ale

woll not beware by two Warnynges, the thyrd tyme to be judged to the Pillory, or unto the cockyng-stole. First to the Cockynge-stole, and aftyr to the Pillory.<sup>30</sup>

At Leicester, in 1467,

The Mayrc comaundeth on the Kyngs behalfe . . . that alle maner scholdys that are dwellyng withinne this town, man or woman, that are found defectyf by sworne men before the Maire presented, that than hit shall be lefull to the same Mayrc for to ponyssh them on a cukstool afore there dore as long as hym lyketh and thanne so to be caried forth to the iiiij gates of the town.<sup>31</sup>

Moreover, as we have seen, at Sandwich in 1534 two women who had been banished the town for whoredom—note that carrying them to the four gates of the town of Leicester no doubt symbolized banishment—were sentenced to "the pain of *sitting over* the coqueen stool," and, to make the confusion more complete, the one woman was to be set in the stocks, and the other "to be placed *in* the coqueen stool, and dipped to the chin."<sup>32</sup> Not a mere local record but a printed sermon of nation-wide dissemination for three centuries includes this passage, perhaps by Hugh Latimer, Bishop of Worcester:

*Agaynst strife and contention*

And the wise kyng Salomon saith: honor is due to a man Prou. xx that kepeth hymself from contencion, and all that myngle theim selfes therewith, be fooles. And because this vice is so muche hurtfull to the societie of a commoyn wealth in

<sup>30</sup> Brushfield, pp. 215 f., quoting from Stow's *Survey of London*, V, xxiv, ed. Strype, II (1745), 445, in turn from fo. 199 of the *Liber Horne* of the City of London, which was announced to appear in H. T. Riley's editions of the *Liber Albus* and *Liber Custumarum* in the Rolls Series but has not been published. For a similar instance, see Brushfield, p. 216.

<sup>31</sup> *Records of the Borough of Leicester*, ed. Mary Bateson, II (Leicester, 1901), 291. William Kelly published this passage in his *Notices Illustrative of the Drama . . . extracted from the Chamberlains' Accounts of the Borough of Leicester* (London, 1865), p. 185; cf. Brushfield, p. 216.

<sup>32</sup> William Boys, as above, p. 684. Italics mine.

all wel ordred cities, these common braulers and skolders be punished, with a notable kynd of pain, as to be set on the cokynghstole, pillery, or suche like. And thei be vnworthy to liue in a common wealth, the whiche do as much as lieth in them, with braulyng and skoldyng, to disturbe the quietnes & peace of the same. And whereof cometh this contencion, strief, and variaunce, but of pride & vainglory? . . . If we haue forsaken the deuill, le vs vse no more deuillishe toungues.<sup>33</sup>

We return to a local record, this time of Norwich, in 1549, unusual because a man is the victim. On January 12,

M<sup>r</sup> Mayour hathe commanded that John Wyllows for his evell demeanours to be sette on the cokestoole w<sup>t</sup> a ray [*i.e.*, striped] hood upon his hedde and so to be caryed abouthe the market. That don to be sette in the stocks.<sup>34</sup>

<sup>33</sup> Brushfield, p. 219; Andrews (1931), p. 228. Certayne sermons appoynted by the Kinges (Queenes) Maestic to be . . . read, by al Persons, Vycars & Curates every Sundaye and holyday in their Churches . . . , Book I; Part III of Agaynst Strife. This "Book of Homilics," as it is usually called, was printyd no less than twenty-five times between 1547 and 1640 (see *Short Title Catalogue* . . . , Nos. 13639 ff.), and the British Museum Catalogue lists nearly twoscore more printyd after 1640. Probably many reprintings were left unrecorded. The standard editions (Cambridge, 1850, and Oxford, 1859) by G. E. Corrie and John Griffiths, respectively, retain the passage substantially as quoted here from the edition of 1547, changing the spelling to *cucking-stool* on the authority of the edition of 1574; such is the case also in the "third American, from the last English edition," Philadelphia, 1844. Each parish church was required to have a copy complete in both parts; thus these sermons enjoyed the dissemination compatible with their function as an integral part of the established church of England.

<sup>34</sup> *Records of Norwich*, ed. William Hudson and John C. Tingey (1910), p. 175. Probably women were usually the victims at Norwich as elsewhere. On October 13, 1524, a widow suffered the punishment of the Cokstole for scolding (II, 161), and on July 16, 1572, a woman was "sett on the cokynghstole at Jackes Pitt and there duckyd" (II, 185). I think this means what the record says—Jack's pit with water in it, not a jakes; cf. ". . . the coukstole is in great decay, and the water-ditch of the same is taken away and enclosed," and "The boothes, the cage and the couckstooles be in great decay, and the water-course of the same cockestooole is taken away and enclosed. Before Whitsunday next William Radclyffe shall remove the yearthe now cast forth of the ditch by the cooke-stoole. . . ."—*Court Leet Records of the Manor of Manchester 1586-1602*, ed. John Harland (1865), pp. 20, 23 (Chetham Society LXV). Apparently people thought that the water in the pit should not be allowed to become stagnant.

I suspect that there was seasonal variation in such instances as these at Norwich, with exhibition alone provided for the colder months, ducking for the warmer ones. In his memoranda for January 26, 1566, John Stow gives an unusually complete report:

At Hedon, Yorkshire, in the time of Philip and Mary, what might be termed the platform of successful candidates at an election runs in part thus:

... no person let no seriant nor other that shalbe assigned by the maiore to dystreine, for debtes that perteins to this towne, nor speake sklandrouse wordes, mysreport, disobey, nor rebuke anye officer (withowt cause reasonable); paine to leise for evrie such offence x. s. or to be set of the pillorie or cokestole, by the maiore's dyscres-sion.<sup>35</sup>

Scotland, too, makes a contribution, this one very early, to our blurred picture. The translation dated 1609 of the Latin given below reads

gif scho [the alewife] maikis ivil ale and dois agane the custume of the toune and be convykkyt of it, scho sall gif til her mercymont viii. s. or than thole the lauch of the toune, that is to say be put on the kukstule.<sup>36</sup>

If we think at first that we have a clue in the phraseology "sitting over" or "set on," we must recognize that it is valueless

Ye Byshope of London comyng to Sainte Margarets in Olde Fishe Strete to preache in the fore none, the people (especially the women) that ware in ye sayde churche unreverently howtyd at hym with many oprobrious words, and cryed "Ware horns," for that he ware a corneryd capp. For ye whiche on ye Satarday next, beyng the 1 day of February, one woman, beyng the wyfe of one — Symson, a tynkar, dwellynge in Southwarke, was sett upon two laddars lyke a cuckengstol before the same churche, where she satt the space of one owre, greatly rejoysnge in that her lewde behavour. . . .

(*Three Fifteenth-Century Chronicles*, ed. James Gairdner, London, 1880, p. 140, Camden Society, N.S. XXVIII). Maybe one reason for rejoicing was that she had escaped ducking in the chilly Thanes close by.

<sup>35</sup> J. R. Boyle, *Early History of . . . Hedon, in the East Riding . . .* (Hull, 1895), pp. xciii-xciv.

<sup>36</sup> Time of David I (1124-1153). *Ancient Laws and Customs of the Burghs of Scotland*, ed. Cosmo Innes (Edinburgh, 1868), I, No. LXIII of the Leges Bur-gorum: *De officiis Brasiatricum et eorum forisfactio*. . . . "Quod si malam [ceruism] fecerit et contra constitucionem ville egerit et in hoc convicta fuerit dabit octo solidos ad forisfactum vel iusticiam ville pacietur ponetur super le cokestole." In Vol. II of the same work is reprinted the following statute of the reign of Queen Mary, dated 1554 (p. 81): ". . . and gis ony wemen or uthers, about simmer treis singand, makis perturbation to the Quenis liegis in the passage throw burrowis and uthers landwart townis, the wemen perturba-touris for skafris of money or utherwyse salbe taken, handellit and put upone the cukstulis of everie burgh or towne." Other instances in Scotland I pass over for the moment, since the development there seems to have been different in some respects. See Chapter II, below.

in view of the quotation already made from the Court Roll of the manor of Bottesford, Lincolnshire, in which it is ordered that a scold "shall . . . be sett upon the Cuk stoll and be thrise ducked in the water." Another possibility to bear in mind is that there may have been two distinct punishments, one sometimes prescribed to follow the other—(1) exhibition and (2) ducking; and we shall probably err if we expect usage throughout all England to be uniform. As a matter of fact, it would be satisfying to find usage in any one village clearly uniform. In the seventeenth century at Leicester, Elizabeth Harris "was adjudged to be put in the Cuckstoole, and be drawne from the Bare Crosse to John Wilson's dore"; and Ann Rankin was reported for brawling, the punishment being "The said Widdow Ramkin [was] sent home in the Cuckstoole then."<sup>87</sup> The confusing role of the cuck-stool as a taxicab appears also at Devizes, Wiltshire, and at Southampton. On August 7, 1583, in the summer season,

Elizabeth Webb wyeffe of John Webb made a complaint against Edith Marten wyffe of Willm Marten that she the said Edith had in very lewde speaches and slanderous terms said that the sayd Elizabeth Webb was a hore and a false for sworne woman, in that with others had been before Mr. Maior and had taken a false othe and suche as did depose the same there was no honesty in them wch words were veryfyed by the testymony of John Cadbye . . . for wch mysdemeanors the sayd Edith was comytted to the Ward and to ryde in the Cuckinge stole from the Guyld Hall unto the dwellinge house of the said Marten and the Cucking stole to stand at her dore.

Here, we feel satisfied, we have a clear definition of the thing as some kind of portable chair not used for ducking; but, again at Devizes, within but six years, on April 17, 1589, we find that Complainte was made by Elizabeth Saser the Wyfe of Richard Saser againste Mathe Simonds the daughter of Agnes Simonds for that the said Mathe called the said Elizabeth "Welshe Houre, Pryst houre" and threatened to thrust a broche in her, the said Elizabeth being in one Dachams house—a poore man, and that the said Mathe

<sup>87</sup> Brushfield, pp. 223 f., from William Kelly's *Ancient Records of Leicester*, in *Reports of the Leicestershire Literary and Philosophical Society for 1855*, pp. 47-51.

is a common scould for the which stalte she was comytted to the Tombrill or Cuckingstoole to be wasshed.<sup>38</sup>

At Southampton the laundering function seems to have prevailed at the expense of the taxicab function, for in 1576, 1577, 1601, and 1603, there was discussion of the cucking-stool "on the Towne ditches"—presumably, then, a stool for ducking. It was used for harlots and scolds. The difficulties of maintaining the stool for ducking in repair, difficulties which may hint why usage is none too clear, are amusingly set forth in 1601:

Item we thincke it fitt for the punishm<sup>ent</sup> of scoldes and such disordered people of the Towne that the cucking stool latelie erected vpon the ditches may be renewed, amended and repayred as in times past it hath benn.

Then follows this marginal note, which we imagine to have been written after heated discussion:

Somthing to be devised to be kept dry & to be vsed att y<sup>e</sup> crane att full sea, ytt rots & is broken standinge abrode, halse a hogshed will serve as well as any thing.

This picture of a barrelful of scold swinging on the rope of a crane ordinarily used for unloading merchandise from ships is a reasonable one, and we should gladly hold fast to it; but—did nobody have a spare barrel?—in 1604, only three years later,

Itm we desier there may be a new cuckinge stoole made w<sup>th</sup> wheeles or some such devise to be carried from dore to dore as the scoldes shall inhabitt so that they may receave punishm<sup>ent</sup> by them for ther daylie misdemeanors and scoldinge as is fittinge for them, w<sup>th</sup> we doubt would be a great ease to M<sup>r</sup> mayor for the time beinge whoe is daylie troubled w<sup>th</sup> suche brawles.<sup>39</sup>

The mayor was in a bad enough case, squarely in the middle between tradesmen eager to keep profits high and housewives eager to keep expenses down. We can but join him in his

<sup>38</sup> B. Howard Cunnington, *Some Annals of the Borough of Devizes* (Devizes, 1925), Part II, pp. 2, 12. "Pryst" probably means "priest's." It looks as if the magistrate agreed with Mathe about Elizabeth!

<sup>39</sup> *Southampton Court Leet Records*, ed. F. J. C. Hearnshaw (Southampton, 1907), I, iii, pp. 141, 174, 345, 381, 405.

lack of case, for just as there is little likelihood that release from scolding women came to him, so release from uncertainty eludes us, for this last statement surely shows that there was a desire to punish scolds at their doors, a fitting enough place because the field of action of the scold militant would be par excellence her own house.

Perhaps the custom in Glamorganshire will help us to make the transition from a chair for exhibition only to a ducking-chair, a transition apparently easy enough from the examples given above, but not easy for us to understand unless the following will help. At Neath, in 1542, it was directed that

If any person do scolde or rage any burgesse or hys wyfe, or any other person and hys wyfe. If she be found faulty in the same by sixe men, then shee to be brought at the firste defaulthe to the Coocking-stoole, and there to sit one howie; at the seconde defaulthe, twoe houres: and at the thirde defaulthe, to lett slipp the pynn, or els pay a good fyne to the king.

Twenty miles southeast of Neath lies Cowbridge, at which town in 1610 Ordinance 26 reads very much like the above:

Item ytt is ordyned, That yf any woman be found guiltie (by vi men) of scouldinge or waylinge any burgesse or theire wiffes, or any other of theire naighbours *TIEN* she to be broughte at the firste faulthe to the cuckinge stoole, there to sitt one howre. At the seconde faulthe twoe howres, And at the third faulthe to lett slipp, or ells a highe fyne to the Lord.<sup>40</sup>

Before I had come upon these, I had wondered what was meant by the mysterious entries in various account-books, for instance at Rye, Sussex, in 1492:

Paid to Robert malford for digging of an hole to set in post for the cuckyng stole	2d.
Paid to Percyvall for an iron pynne for the said cukstole	3d.

<sup>40</sup> Neath: Llewellyn Jewitt, *The Reliquary*, I (1860-61), 151, and *Original Charters . . . of Neath*, ed. George G. Francis (Swansea, 1845 ["not published!"]), extract 21, for 1542. Lemuel J. Hopkin-James, *Old Cowbridge . . .* (Cardiff, 1922), p. 33. Compare W. Hylton D. Longstaffe, *History . . . of . . . Darlington (county Durham)* (2d ed., London, 1909), p. 285; "for a iron pynne and a stowpe [a small cask] of wood imploied to the Duckstoole, 5 s."—Borough Books, 1615.

Paid to William Carpenter for 30 fote of timber for the  
cukkyng stole 2s8d.  
Paid to the same William and his man for 2 daies labor in  
dressing and setting up of the said stole 2 0

At Canterbury, in 1520 and 1547:

(1520) Item, paied for a pece of tymber for the ladder of the  
cuckyng-stole, and staves to the same xx d.  
Item, for slytting of the seid pece of tymber in iij.  
calves, with the ij. shelle calves, viij d.  
\* \* \*

Item, paied for a pynne of yren wayng xij. li., and  
ij. plates wayng viij. li., price li. j d. ob.  
summa ij. s. iiiij d.

(1547) ij. iren pynnes for the cokyng-stole, wayng v. li. at  
ij. d. ob. the li. xij d. ob.<sup>41</sup>

At Southampton, too, pins must have been used also, in addition to the apparatus we have already noticed, for according to the Steward's Book for 1475, these expenses were incurred:

Costes doon in makynge of the scooldyng stoole.  
Furste paid for j pece of tymbre x d.  
for sawing of the same piece in iij pecces viij d.  
for iij boltes and ij pinnes of iron for the same stoole vij d.  
for the wheeles to convey the said stole by commaundement  
of the meyre iiijs iiiij<sup>42</sup>

My guess is that the "pins" were large heavy bars similar to belaying-pins, used to hold the considerable weight of the off-center chair and its occupant in place until all was ready for submerging.

The inferences which can be drawn from the allusions to the cucking-stool thus far set forth here are reasonably clear. From the thirteenth century on in England there were at least

<sup>41</sup> Calves == pieces. See *E.D.D.*, s.v. *calf* sb.<sup>b</sup>

<sup>42</sup> Rye: Leopold A. Vidler, *A New History of Rye* (Hove, 1934), p. 44. Canterbury: Thomas Wright, *The Archaeological Album* (London, 1845), p. 52. Southampton: John Silvester Davies, *History of Southampton* (Southampton and London, 1883), p. 323.

two different kinds of instruments designated by approximately the same term, one of them a chair in which women were ducked, the other presumably also a chair or pillory, stationary or moveable, in which or on which offenders were exposed to public view. Both punishments apparently owe their effectiveness not so much to actual physical discomfort or pain as to the humiliation of exhibition in public before the misdoer's daily associates, the neighbors. Thus far, then, the *cucking-stool* would appear to have been (a) a chair in which women were publicly ducked in the water; (b) a stationary construction of unknown form in which or on which misdoers were exhibited in public; (c) a moveable apparatus of unknown form, presumably chairlike, in which misdoers were carried or wheeled about from one place to another, again in public.

After much study of the matter and after scrutinizing the evidence available to him—some little has been published since 1864—Brushfield decided on the basis of classification not quite so rigorous as that followed here, that conclusive evidence as to the origin of these three types was supplied by combining the definition of Brother Geoffrey quoted above for *cukkyngē vesselle* with a passage in that most venerable and baffling of tax-books or valuation-books, the *Domesday Book*. In this, Brushfield was following Albert Way, who had relatively few examples before him in drawing up his note to Brother Geoffrey's definition of *cukstole*. It happens that inasmuch as Chester was a county palatine, the inquest for that county went most particularly into the relative shares of earl and king in pecuniary mulcts or fines; and therefore it behooved the investigators to list the many crimes and misdemeanors in this district which were punishable by fine rather than otherwise. The harrying of Britain by the agents of the Conqueror had wrought much damage, especially in the North; and therefore in drawing up the questionnaire-like procedures for ascertaining the taxable values of the realm, the ruling forces found it expedient to learn what the status had been twenty years be-

fore, on the day when King Edward was "quick and dead"—that is, on January 5, 1066. Thus the *Domesday Survey of Cheshire* begins by saying that "The City of Chester in King Edward's time paid geld for 50 hides," and then proceeds at once to give a lengthy list of the bylaws of the City of Chester, "the fullest extant for any English city before the Norman Conquest," according to Professor Tait. A man who caused blood to be shed during the week paid a fine of ten shillings, if between Saturday noon and Monday morning, twenty shillings, as was the case if he committed the deed on any one of several holy days. A widow paid a fine of twenty shillings for incontinence, whereas a maid was fined but ten shillings. Arson was watched closely. In case of fire, the man in whose house the fire started paid a fine of three ounces of pence, and to his next neighbor he had to pay two shillings. Then, after some regulations regarding ships, comes the passage of greatest interest to us. It will be best to leave it in the original for the moment.

Vir siue mulier falsam mensuram in ciuitate faciens, deprehensus  
iii solidis emendabat. Similiter malam ceruism faciens aut in  
cathedra ponebatur stercoris aut iii solidos dabit præpositis. Hanc  
forisfacturam accipiebat minister regis et comitis in ciuitate in cuius-  
cunque terra fuisset, siue episcopi siue alterius hominis.<sup>43</sup>

At page 83 of his edition, Professor Tait translates this passage. Any reader of these pages will agree with me that he is more than a little bold when he renders *cathedra stercoris* as "cucking-stool," for we have just seen that in the first place we do not know what the cucking-stool was, and in the second place it seems to have been several things. That is, we have two sets of unknowns here in which Professor Tait moves with

<sup>43</sup> The survey of Cheshire in *Domesday Book* begins on fo. 262b, and the passages above summarized or quoted are also on this folio. I use the edition of the Cheshire survey prepared by James Tait for the Chetham Society, Vol. LXXV, N. S., Manchester, 1916. See James F. Morgan, *England under the Norman Occupation* (London and Edinburgh, 1858); Frederic W. Maitland, *Domesday Book and Beyond* (Cambridge, 1897); Paul Vinogradoff, *English Society in the Eleventh Century* (Oxford, 1918); Adolphus Ballard, *The Domesday Inquest* (2d ed., London [1923]); and R. Stewart-Brown in the *English Historical Review*, XXXVII (1922), 481-500; cf. *ibid.*, XXXVIII (1923), 240.

a feeling of security which we must deny ourselves. The conservative rendering would be something like this:

A man or woman caught giving false measure in the city paid a fine of four shillings. Similarly, [a man or woman caught making] bad beer either was placed in [or on] the *cathedra stercoris* or paid four shillings to the reeves.

The question of course is, what was this *cathedra stercoris* in or on which brewers of bad beer were placed? The two words can be easily rendered; everybody who has seen them, I suppose, has regarded them as designating a privy stool, a close stool, a stool of use. Whether the converse is true, namely, that a stool of use was demonstrably called a *cathedra stercoris*, is another matter to which we shall return later. We remember that in the *Satire on the People of Kildare* (1308), "brewsters" were cautioned about the "coking-stol, the lak is dep and hori"; but this fucking-stool was surely a stool in which the pulpit was ducked, in view of the allusion to the lake. On the other hand, the assize of the City of London for 1468, quoted above, asserts that brewers who brew short ale shall be judged to the "Cockyng-stole." We can only guess whether this was what the *cathedra stercoris* has been thought to have been. Specific evidence is needed before we can be sure of anything in that most esoteric of records, *Domesday Book*. At Leicester in 1467 it was lawful for the mayor to punish scolds by placing them "on a Cukstool a fore there dore . . . and thanne to be caried forth to the iiiij gates of the Town," as we have seen. We do not visualize the device; does that justify us in leaping to the conclusion that it must have been a privy chair? Unfortunately, background for the *cathedra stercoris* as an instrument of punishment for brewers, male or female, or for anybody else, is completely lacking in the relatively numerous codes of laws for the Anglo-Saxon period; and we get little help from later developments at Chester, for a privy chair as a means of punishment is not mentioned there—or anywhere else—and the fucking-stool is mentioned there only in 1505, when Katherine Walsh, a *communis objurgatrix et communis chider infra*

*civitatem*, was sentenced to be placed on "le Cokstole"—"Mem" po. super le Cokstole," and in 1685, when the sum of one pound, seven shillings and sixpence was paid to "Bryan Bolland for a cukstool, by Mr. Maior's order."<sup>44</sup>

Brewing bad beer probably meant using too little grain. A hint as to the source of the information on this point in the *Domesday Book* is supplied by that distinguished investigator of the English borough, Mary Bateson, when she cites the *Ancienne Coutume de Normandie* to the effect that "the customs which gave the setting of weights and measures to the barons came to Normandy from England [italics mine], for the kings of England introduced this custom."<sup>45</sup> We cannot assume that violation of the regulations of weights and measures was punished in any particular way in Anglo-Saxon England, for the directions that normalized or standard weights and measures be used seem merely rhetorical. No penalty is attached to violation, and in general during the Middle Ages, all efforts to force uniformity in this respect were fruitless, local customs as a rule being so strong that they could not be supplanted. To this day in England, there are still in use twenty-five local corn weights and measures, twelve different bushels, thirteen different pounds, ten different stones, and

<sup>44</sup> Rupert H. Morris, *Chester in Plantagenet and Tudor Times* (Chester [1893]), p. 195; Brushfield, p. 227. In George Ormerod's *History of . . . Chester*, ed. Thomas Helsby (2d ed., London, 1882), the sole allusion to a punishment at all resembling the kinds here under inquiry is one to the tumbrel, for fraudulent bakers (II, 790), and the cucking-stool, as we learn from Ormerod's source, John Watson's *Memoirs of the Ancient Earls of Warren and Surrey . . .* (Warrington, 1782), II, 220, quoting I think from MS B.M. Add. 2115 (1480-1502), ". . . ponere eas . . . super quoddam scabellum, vocatum a cookynstoole, . . ."

<sup>45</sup> *English Historical Review*, XV (1900), 509. Miss Bateson resumes: "A passage which is of importance to the discussion of the question, to whom did the regulation of weights and measures belong in the Middle Ages? It will be remembered that the Domesday account of the pre-Conquest English customs records that women who had made bad beer were punished with a fine of 4s. or the cucking-stool." Is it not clear that this passage, which I have just quoted in the text, does not restrict the *cathedra scacoris*—which is what Miss Bateson means in the phrase "of the cucking-stool"—to women? Carl Stephenson, *Borough and Town* (Cambridge [Mass.], 1933), pp. 71 f. (Publications of the Mediaeval Academy, No. 15), alludes to weights and measures in the laws of Edgar and Æthelred on the basis of materials collected by Felix Liebermann in the index of his *Die Gesetze der Angelsachsen*, s.v. *Gewicht*. Cf. James Tait, *The Medieval English Borough* (Manchester, 1936), p. 118.

nine different tons, each no doubt reflecting ancient local custom.<sup>46</sup> The situation appears to have been much the same in medieval Germany, the main point there as elsewhere being that uniformity of weights and measures can be secured only through the consistent action of an overpoweringly strong central authority; and this was usually lacking during the Middle Ages.<sup>47</sup> No doubt this diversity of local customs is responsible for the unusual penalty of death by drowning in the Tyrol for any falsification, whether counterfeiting of coins or the use of false weights and measures.<sup>48</sup> This punishment, particularly interesting in connection with Chapters IV and VI below, may be a reminiscence of an earlier custom which has otherwise completely disappeared, but I should incline rather to regard it as an extension of the penalty for tampering with the coinage, the great seal, and other important official perquisites of the ruler.<sup>49</sup>

At least for the moment, we are at the end of this line of inquiry. We perceive that there is no good reason for supposing that the word *cucking-stool* or even the word *cuck* existed in Old English; and although the *cathedra stercoris* of *Domesday Book* would seem by force of the words themselves to have been a privy chair, we have not as yet seen reasons to justify us in identifying the *cucking-stool* or *cocking-stool* or whatever the variant spelling may be, with the *cathedra stercoris*. Only

<sup>46</sup> W. H. Prior, "Notes on the Weights and Measures in Medieval England," *Bulletin du Cange*, I (1924), 77-97, 141-170, esp. p. 86.

<sup>47</sup> Georg Käntzel, *Über die Verwaltung des Mass- und Gewichtswesens in Deutschland während des Mittelalters* (Leipzig, 1894), p. 83 (Staats- und sozialwissenschaftliche Forschungen XIII, 2); *De Weeghdaet beschreven duer Simon Stevin van Brugghe*, Leyden, in *de Druckereye van Christoffel Plantijn*, by François van Raphelghen (1686); *Dominicus Massaius Vincentinus, De ponderibus et mensuris medicinalibus libri tres* (Tiguri, M. Froschouer, 1584). Usually in Germany, as in England, no penalty is specified for infraction. When a penalty is specified on the Continent, it is the payment of a small fine and perhaps the forfeiture of the wares and utensils involved.

<sup>48</sup> Abraham Saur, *Straff Buch* (2d ed., Franckfurt am Mayn, 1581), p. 25, from "art. 30, lib. 8," presumably from a collection of Tyrolese statutes. I do not find it. Saur adds, "Item der Statt Freyburg in Brüggw vergleicht sich hierinn durchaus mit der Tyrolischen."

<sup>49</sup> The most extensive surveys other than those already listed are P. Guilhiermoz, "Note sur les poids du moyen âge," *Bibliothèque de l'Ecole des Chartes*, LXVII (1906), 161-233, 402-450; LXXX (1919), 5-100, and Ludvig B. Falkman, *Om Mått och Vigt i Sverige: Historisk Framställning* (2 vols., Stockholm, 1884-1885).

by turning to these variant spellings can we hope to proceed in our effort to untangle the snarls in which the evidence has got us involved. As we look at these variants, it will be well to keep in mind that their presence in our list does not mean in any way that they are necessarily slightly varying terms for the same thing, whatever that same thing may have been; we must be prepared for any and all kinds of variation, both functional and morphological. The best that we can do is to examine the forms, in chronological order, remembering the importance of location and function as well as the importance of date. To simplify matters as far as possible, we may classify function as follows: (a) instances in which ducking in water is explicitly or implicitly concerned; (b) instances in which exhibition only is concerned; (ab) instances in which both ducking in water and exhibition are concerned; (c) instances in which the method of punishment is not made clear. This last classification being negative, no argument can be based upon it. Most forms known to me up to 1600 are included; the occasional ones after 1600 are included because of the specific evidence which they provide. The year 1600 is an arbitrary date at which to stop, selected because the forms afterward supply substantially the same evidence, the only difference being that the ducking-stool gradually supplants more and more theucking-stool as the seventeenth century proceeds. The forms after 1600 give us no variation not already present before 1600. In any case, significant forms of whatever date are discussed whenever it seems pertinent to examine them.<sup>50</sup>

<sup>50</sup> I restrict myself to forms in print. The number could be increased considerably if a protracted examination of the almost innumerable likely MSS were undertaken. Brushfield, for example, had seen B.M. MS. Harley 2115, a copy, by the earliest of the Randle Holmes, of the Quo Warranto rolls for Chester of 15 and 16 Edw. I (1286-88); here several references to the *thew* and to *Cokestole*, *Cokynstole*, *Cukstole*, as well as to the *tumbrel*, are to be found (MS. Harley 2115, fo. 146, v<sup>o</sup>, fo. 147 v<sup>o</sup>—here *tumbrel*, *thew*, and *Cokynstole* are equivalent—fo. 153 v<sup>o</sup>, where the same is true; these are from Assize Roll of Chester at the P.R.O., Chester 34/4, membranes 9, 10, 19. The Plea Rolls of the Palatinate of Chester have not yet been published). The forms listed in *A Dictionary of the Older Scottish Tongue* . . . (Oxford, 1931) came to hand too late to be included. For the table that follows, the use of a statistical method is not encouraged by R. Roberts and A. S. C. Ross, "The Interpretation of the Statistics of Variant Forms," in *University of Leeds Studies in English*, No. 2, 1933.

## JURIDICAL FOLKLORE

FORM	DATE	PLACE	FUNCTION
1 cokestole.....	1124-1153.....	Scotland.....	c
2 cuckestolam (acc.).....	1199-1216.....	Preston, Lancs.....	c
3 Cocking-stool.....	1216-1272.....	Cotford Farlo, Cornwall.....	b
4 cok-stol.....	ca. 1320.....	[England].....	c
5 coking-stol.....	1308.....	Kildare, co. Kildare, Ireland.....	a
6 le Cuckyngetol.....	1357.....	Clare, Suffolk.....	c
7 Cukle Stull.....	ca. 1357.....	Bamburgh, Northumberland.....	c
8 Cucking Stole.....	1377-1399.....	King's Lynn.....	c (a) implied?)
9 Cookestowle.....	1423.....	Coventry, Warwickshire.....	c
10 Cokestole.....	1436.....	Coventry.....	c
11 Cokstoll.....	1437.....	Coventry.....	c
12 Cukstole.....	ca. 1440.....	Norfolk.....	c
13 cuxstolepit.....	1456.....	Beverley, E. Riding, Yorks.....	a
14 cukstool.....	1467.....	Leicester.....	b
15 Cockyng-stole.....	1468.....	London.....	c (b) likely)
16 cuckkyng stole.....	end fifteenth century.....		c
17 cokstul.....	1484.....	Saffron Walden, Essex.....	c
18 cokeyng stoll.....	1486.....	Plymouth.....	a
19 cookynstoole.....	1489-1502.....	Chester.....	c
20 {cukstole.....	1492.....	Rye, Sussex.....	c
cuckkyng stole.....			
21 cucking stool.....	1499.....	Ayton and Rushton, Cheshire.....	b
22 cokkyng.....	1500.....	Aylesbury, Bucks.....	c
23 cuckkyng stole.....	ca. 1500.....	Northampton.....	c
24 Cokstole.....	1505.....	Chester.....	c
25 Cokyng stoole.....	1505.....	Rye, Sussex.....	c
26 cukkyngstole.....	1511.....	England generally.....	c
27 cuckyng-stole.....	1520.....	Canterbury.....	c
28 Cokstole.....	1524.....	Norwich.....	c
29 Kokyng stole.....	1525-1526.....	Plymouth.....	c
30 coqueen stool.....	1534.....	Sandwich, Kent.....	ab
31 Coocking-stoole.....	1542.....	Neath, Glamorganshire.....	ab
32 cooking stoole.....	1543.....	London.....	a
33 cokynystole.....	1547.....	Canterbury.....	c
34 cock stole.....	1548.....	Leicester.....	c
35 cokestoole.....	1549.....	Norwich.....	b
36 cokyngstole.....	1547-1574.....	London (England generally).....	c
37 cokingstoole.....	ca. 1550.....	London.....	a
38 cuctstole.....	1552.....	Leicester.....	c
39 cucking-stool.....	1552.....	Edgware, Middlesex.....	c
40 cucking stoole.....	1552.....	Audley End, Essex.....	c
41 cokestole.....	1553-1558.....	Hedon, E. Riding, Yorks.....	c
42 cukstoole pitt.....	1556.....	Beverley, E. Riding, Yorks.....	a
43 Kockestoll.....	1556.....	Banbury, Oxfordshire.....	c
44 cockystole.....	1557-1558.....	Leicester.....	c
45 kuckstole.....	1559.....	Leicester.....	c
46 Kockestol.....	1560-1561.....	Leicester.....	c
47 Cuckinge stoole.....	1560-1561.....	Plymouth.....	c
48 cooking stoole.....	1561.....	Exeter.....	c (a)
49 cokynystoole.....	1561.....	Exeter.....	a
50 Cokyng-Stool.....	1562.....	Norwich.....	a
51 cuctstoole.....	1563.....	Leicester.....	c
52 cucking stool.....	1563.....	Norwich.....	a
53 Cookyng-Stole.....	1563.....	Leominster, Herefordshire.....	c
54 cowkstole.....	1563.....	Tamworth, Staffs., and Warwickss.....	c
55 Cokyngstole.....	1564.....	Leominster, Herefordshire.....	c

FORM	DATE	PLACE	FUNCTION
56 cokynstole	1564	Kilnington, Devonshire	c
57 le kuckstowle	1565	Bottesford, Lincs.	c
58 cuckengstole	1566	London	b
59 coockstole	1566-1567	Leicester	c
60 costolle	1567	Minchinhampton, Gloucs.	c
61 cukking stolle	1572	Kingston-on-Thames	ab
62 cokynstole	1572	Norwich	a
63 cuckestule	1573	Nottingham	c
64 cucking-stool	1574 ff.	London (England generally)	c
65 cocking stolle	1576	Southampton	a
66 Cuk stoll	1576	Bottesford, Lincs.	a
67 cuckingstooles	1577	England [Harrison]	a
68 couckstole	ca. 1577	London	c
69 cuckingstole	1577	Northleach, Gloucs.	c
70 Cuckstool	1578	Lichfield, Staffs.	c
71 cuckstole	1578	Leicester	c
72 Cucking stoole	1579	Southampton	a
73 cowkeinstolle	1579	Wakefield, W. Riding, Yorks.	c
74 cook stoole	1580	Sheffield, W. Riding, Yorks.	c
75 cuck stoole		Devizes, Wilts.	b
76 cookingstole	1583	Audley End, Essex	c
77 couckinge stowle	1583	Burford, Oxfordshire	c
78 cucking stole	1585	King's Lynn	c
79 Cucking-stool Pool	1586	Manchester	a
80 Cookeing Stool	1588	Sandbach, Cheshire	c
81 cuckinge-stol	1588	Milton Abbot, Devonshire	c
82 Cuckingstoole	1589	Devizes, Wilts.	a
83 coukstole	1590	Manchester	a
84 couckstoole	1591	Manchester	a
85 Cocklestool	1592	Congleton, Cheshire	c
86 [Cucke stoole	1592	Sheffield, W. Riding, Yorks.	c
87 [Cuck stoole		Nantwich, Cheshire	c
88 cooking-stool	1593	Banbury, Oxfordshire	c
89 cockstole	1593	Ilkley, Lancs.	a
90 Cockstroole	1594	Stubham and Middleton, Lancs.	a
91 Cuckingstole	1594	Seaford, Sussex	c
92 Cockstroole	1594	Middleton, Lancs.	a
93 Cockstole	1595	Congleton, Cheshire	a
94 Cook stoole	1597	Coventry, Warwicks.	c
95 cucke-Stool	1597	Norwich	a
96 Cockling stool	1598	Congleton, Cheshire	c
97 cucking-stoole	1598	London	c
98 cuckstoole	1599	Louth, E. Riding, Yorks.	c
99 cookestoole	1599	Manchester	c
100 cucking stoole	1599	Congleton, Cheshire	c
101 cuckestole	before 1600?	Newark-on-Trent, Notts.	c
102 cucking stoole	1604	Southampton	a
103 cooking stool	1607	Warminster, Wilts.	c
104 cuckinge stoole	1610	Cowbridge, Glamorganshire	ab
105 cuckstoole	1612	Darlington, co. Durham	a
106 cucking stoole	ca. 1615	London [Cucking of a Scould]	a
107 cuckinge stoole	1618	Calne, Wilts.	a
108 cuckstoole	1619	Darlington, co. Durham	a
109 Cuckstoole	?	Leicester	b
110 Cuckstoole	?	Leicester	b

- 1 *Ancient Laws of . . . Scotland*, ed. Cosmo Innes, I, No. LXIII.
- 2 *English Historical Review*, XV (1900), 502. See also Charles Hardwick, *History of Preston* (Preston, 1857), p. 260. The cuckstool was used to duck scolds after 1650; *Preston Court Leet Records*, ed. Anthony Hewitson (Preston, 1905), shows a dozen instances.
- 3 Borlase's *Cornwall*, I, 303.
- 4 *Poem on the times of Edward II*, ed. C. Hardwick (Percy Soc., XXVIII, 1849). Cf. Wells's *Manual*, chap. iv, No. 35.
- 5 W. Heuser, *Die Kildare-Gedichte* (Bonn, 1904) (Bonner Beiträge XIV), p. 157. Cf. Wells's *Manual*, chap. iv, No. 37.
- 6 Gladys A. Thornton, *History of Clare* (Suffolk [1928]), p. 102.
- 7 *A History of Northumberland: I. The Parish of Bamburgh*, by Edward Bateson (Newcastle and London, 1893), p. 128. "Sciunt quod ego Henricus Elwald dedi Gilberto deo de Bamburgh burgagium meum in le Ratonrawe juxta le Cukle Stull."
- 8 H. Harrod, *Deeds and Records of . . . King's Lynn* (King's Lynn and London, 1874), p. 126: "William Blome, 12d. for inclosing land at Cucking Stole and stopping Common Fleet."
- 9 *Leet Book of Coventry*, ed. Mary Dormer Harris, p. 59 (E. E. T. S., O. S.). In his edition of the *Promptorium Parvulorum*, note s.v. *cukstole*, Way gives this form as *cokesstole*.
- 10 See 9, p. 186.
- 11 See 9, p. 188.
- 12 *Promptorium Parvulorum*, ed. Way, s.v. If my emendation of *caduca* to *cadūca* is sound, then this is of course a ducking-stool; but I do not so classify it here.
- 13 Poulsen's *Beuerlac*, I, 221.
- 14 *Records of . . . Leicester*, ed. Mary Bateson, II, 291.
- 15 Stow's *Survey of London*, ed. Strype (1745), p. 445.
- 16 Brushfield, p. 216, from *Lansdowne MS.* 796, where the form is plainly *cukkyng stole*, as can easily be seen in *A Catalogue of the Lansdowne MSS.* (1819), p. 183. Brushfield gives *Cuckying Stool*. The place where this "syse of an ale-breware" who goes first to the *cukkyng stole* and afterwards to the pillory was enforced is not named.
- 17 Brushfield, p. 216, from "Lord Braybrooke's History of Audley End quoted in Way's notes to *Primp. Parv.*" Richard G. Neville's work of this title (1836), p. 227.
- 18 *Plymouth Municipal Records*, ed. R. N. Worth (1892), p. 89.
- 19 John Watson, *Memoirs of Earls of Warren . . .* (Warrington, 1782), II, 220.
- 20 Leopold A. Vidler, *New History of Rye* (Hove, 1934), p. 44.
- 21 Thomas Blount, *Dictionary* (3d ed., 1717) s.v. *thew*; and of George Ormerod's *Chester*, ed. Helsby, II (2d ed., 1882), 225 ff. Ayton (now Eaton) and Rushton were in the Parish of Taporeley, just west of Little Budworth, in Edisbury Hundred, Cheshire.
- 22 *Archæologia*, L (1887), 99.
- 23 *Bygone Northamptonshire*, ed. William Andrews (1891), p. 165.
- 24 Morris, *Chester in . . . Tudor Times* (1893), p. 195.
- 25 See 20, p. 49.
- 26 Act agaynst deceiptfull making of Woollen Cloth, 3 Henry VII, c. 6.
- 27 Thomas Wright, *Archæological Album* (1845), p. 52.
- 28 *Records of Norwich*, eds. Hudson and Tingey, II (1910), 161.
- 29 See 18, p. 106.
- 30 William Boys, *Sandwich* (1792), p. 684. This, the unique occurrence of *coqueen stool*, must have been the clerk's guess.
- 31 *The Reliquary*, I (1860), 151.
- 32 Charles Wriothesley, *Chronicle of England*, ed. Hamilton (Camden Society), pp. 145 f.
- 33 Same as 27.
- 34 See 14, III, 57.
- 35 *Records of Norwich*, eds. Hudson and Tingey, II, 175.
- 36 (See note, p. 22, above) *The Homiliae*.
- 37 Charles Bansley's *Treatyse . . .*, ed. Collier (1841), p. 8.

38 William Kelly in *Reports of Leicester Literary ... Society* for 1855, p. 47. One cannot be sure of the accuracy of Kelly's forms.

39 Lysons, *Environs of London* (1795), II, 244.

40 Richard G. Neville, *History of Audley End* (London, 1836), p. 261.

41 J. R. Boyle, *Hedon* (1895), pp. xcii f.

42 Poulson's *Beverlac*, I, 312.

43 Alfred Beesley, *History of Banbury* (1841), p. 224.

44 See 14, III, 92.

45 See 14, III, 94.

46 See 14, III, 100.

47 See 18, p. 118.

48 *Trans. Devonshire Association*, XLIV (1912), 221. Observe that this instance taken in conjunction with No. 47, as it ought to be, clearly involves ducking in water.

49 Same as 48.

50 Francis Blomfield, *History of Norfolk* (1745), II, 739.

51 Same as 38, q.v.

52 *Depositions of ... Norwich*, ed. Walter Rye (Norwich, 1905), p. 73.

53 George F. Townsend, *The Town ... of Leominster* (Leominster [1863]), p. 318.

54 Charles F. Palmer, *History of Tamworth* (Tamworth, 1845), p. 190.

55 Same as 53.

56 *Trans. Devonshire Association*, XXXVII (1905), 128.

57 *Archæologia*, L (1837), 375.

58 *Three Fifteenth-Century Chronicles*, ed. James Gairdner (Camden Society, N. S. XXVIII, 1880), 140.

59 See 14, III, 121.

60 *Archæologia*, XXXV (1853), 428. Brushfield's suggestion that this is a corruption of "curst stool" is superfluous.

61 *Proc. Surrey Archæol. Soc.*, II (1860), 91.

62 See 35, II, 185.

63 *Records of the Borough of Nottingham*, IV (1889), 151. Cf. the Constables' presentations here in 1619 (p. 361):

We present Kew Willson for a skould . . . .	— Cuckstoole.
Mary Callis for the lycke . . . . .	— Cucked.
Ales Porter for the lycke . . . . .	— Cucked.
Amye Jowet for the lycke . . . . .	— Ducked.
[Four others named] for the lycke . . . . .	— Ducked.

See pp. 372, 377, 389 for several others, and V (1900), 102, 104, 113, 158, 184. In 1626 (p. 110) a woman was fined, not ducked. For other instances in Nottinghamshire in the seventeenth century, see *Notts. County Records*, ed. H. H. Copnall (Nottingham, 1915), pp. 32 f.

64 Same as 36 but from 1574 on.

65 *Papers and Proc. of the Hampshire Field Club*, V (1904-06), 222.

66 *Gentleman's Magazine*, N. S. X (1861), 442.

67 Harrison's *Description of Britaine* . . . . , ed. Furnivall, p. 228.

68 *Misogonus*, II, v, 59-60, ed. R. Warwick Bond in *Early Plays from the Italian* (Oxford, 1911), p. 216.

69 *Trans. Bristol and Gloucs. Archaeological Soc.*, VII (1882-83), 102.

70 Harwood's *Lichfield* (Gloucester, 1806), p. 383.

71 Same as 38, q.v.

72 *Southampton Court Leet Records*, ed. Hearnshaw (1905), p. 174.

73 S. H. Waters, *Wakefield in the Seventeenth Century* (1933), p. 31.

74 *Records of the Burgery of Sheffield*, ed. John D. Leader (London, 1897), p. 43.

75 *Annals of Devizes*, ed. B. H. Cunningham, Part II, p. 2.

76 See 40, p. 264.

77 *The Burford Records*, ed. R. H. Gretton (Oxford, 1920), ad ann. 1583.

78 H. Harrod, *Deeds and Records of King's Lynn* (1874), p. 89: "Paid to Robert Forlam for devising and making the 'cucking stole,' and for carrying it into the Common Staithes yard and setting it up there in order, with ironwork, 12s. 9d." Staithes means "land bordering on water" — OED.

79 Brushfield, p 220, also (one word without hyphen) in Constables' *Accounts of Manchester*, ed J P Earwaker (1891-92), I, 571. For examples later than 1600, see I, 125, 131, III, 334.

80 Brushfield, p 221, "information of T W. Jones, of Nantwich", but not mentioned in J P Earwaker's *History of Sandbach* (privately printed, 1890).

81 *Trans Devonshire Association*, XI (1879), 236, cf Hilderic Friend, *Bygone Devonshire* (London, 1898), p 95.

82 See 75, p 12.

83 *Court Leet Records of the Manor of Manchester 1586-1602*, ed John Harland (1865) p 20 (Chetham Soc, LXV).

84 See 83, p 21. Brushfield, p 220, gives *cuckstool*. No doubt Harland is right.

85 Brushfield, p 221.

86 See 74, p 63. For instances in 1616 and 1747, see pp 136, 369.

87 James Hall, *History of Nantwich* (Nantwich, privately printed, 1883), p 72.

88 Same as 43.

89 Robert Collyer and J H Turner, *Ilkley Ancient and Modern* (Otley and Leeds, 1885), p 131.

90 See 89, p 127.

91 *Sussex Archaeological Collections*, VII (1854), 100 ff.

92 Same as 89, p 127.

93 Brushfield, p 221.

94 *The Reliquary* (1860), p 155.

95 Same as 50.

96 Brushfield, p 221.

97 Edward Guilpin, *Skialethia* (1598) ed. Utterison (1843), and in facsimile by the Shakespeare Association (1931), *Satyrus Prima*, II 11 f. Reference from Miss Nora Thomas.

98 *Louth Old Corporation Records*, ed R W Goulding (Louth, 1891), p 54.

99 See 83, p 52. It was called *cockestooe* again in these records in 1602, p. 61.

100 Robert Head, *Congleton Past and Present* (Congleton, 1887), p. 64.

101 Cornelius Brown, *History of Newark-on-Trent* (Newark, 1909), II, 72.

102 See 72, p 401.

103 *Records of the County of Wilts*, ed B H Cunnington (Devizes, 1932), p 24. For later occurrences, see pp. 121, 246.

104 Lemuel A. Hopkin-James, *Old Cowbridge* (1922), p 33.

105 W H D. Longstaffe, *Darlington* (2d ed, 1909), p 286.

106 A Pepysian Garland, ed. Rollins (1922), pp 72 ff.

107 *Wilts Archaeological Magazine*, XLV (1930-32), 498.

108 See 105, p 33.

109 Same as 38, q.v.

110 Same as 38, q.v.

Some of these forms are definitely suspect, many more perhaps ought to be, but I can find no criterion for acceptance or rejection. The only reasonable procedure is to rest no argument on a single form or group of forms about which there is doubt. Henry Fishwick, *History of the Parish of Kirkham, Lancs.* (Chetham Soc, XCII, 1874) p 18, says that in 1296 "there was to be in the borough a prison, a pillory, a *cucking-stool* and other instruments of punishment". What word he renders as "cucking-stool" I do not know, therefore I leave it out of account.

If we consider function first, we can select those instances in which ducking in water took place. These are 5, 13, 18, 30, 31, 32, 37, 42, 48, 49, 50, 52, 61, 62, 65, 66, 67, 72, 79, 82, 83, 84, 89, 90, 92, 93, 95, 102, 104, 105, 106, 107, 108. These thirty-three of similar, perhaps identical, function range in date from 1308 to 1619; one in the fourteenth, two in the fifteenth, twenty-four in the sixteenth, six in the seventeenth century. They appear

so widely distributed over all of England, from Yorkshire to Devonshire, from Hampshire and Sussex and Kent to Glamorganshire and Norfolk and Cheshire, that we can discern no significance in any one county or group of adjacent counties; that is, we cannot assert that the punishment by ducking originated in any one place and spread thence over the island. Can we generalize as to the misdeed punished or punishable by ducking? It is implied in 5, perhaps in 18, too. Items 30, 32, 50, and 65 show women ducked for whoredom; 61 and 72 for whoredom and scolding; 31, 48, 49, 66, 67, 82, 90, 92, 93, 95, 102, and 105 show women ducked for scolding; 37 is indefinite—tricky women are ducked; in 84 a woman is ducked for uttering slanderous words; and in 107 we do not know precisely why folk-justice by ducking was to be inflicted upon Agnes Wells. All instances of ducking, it should be noted, specifically say that women are the culprits. The only reasonable generalization on this is that, toward the end of the sixteenth century, ducking seems to have been used more and more for scolding women. The distinction of first ducking a woman specifically for being a scold apparently belongs to Neath, Glamorganshire, in 1542; but in view of the accidental way in which records have survived, it would take a hardy man to say that this punishment originated there and passed to the other counties, to Devon and Hampshire and Lincolnshire and Norfolk and Durham, to name no more.

Those in which ducking and exhibition are specified together are few in number and have been included in the group just glanced at. These—30, 31, 61, 104—occur in Kent, Glamorganshire, Surrey, and Glamorganshire again; they are punishments for whoredom, scolding, scolding and fighting, and scolding, respectively. Perhaps they show more concentration locally simply because they are few in number.

The last group to be considered from this functional point of view is also small. Those in which exhibition only is specified are 3, 14, 15, 21, 35, 58, 75, 109, 110, in Cornwall for scolding and whoredom, at Leicester for scolds whether male or

female, at Ayton and Rushton for scolding, in Wiltshire for slandering, at Leicester again, once for an unspecified misdemeanor, once for brawling—i.e, scolding. Combine this group with the preceding one (ab), and we may for a moment imagine that the Midlands seem to constitute the main field of activity. To test this possibility, let us look at the words used:

3 cock-	31 coack-	104 cuck-
14 cuk-	35 coke-	109 cuck-
21 cuck-	61 cukk-	110 cuck-
30 coq-	82 cuck-	

We observe at once that we get no corroboration for our tentative group and therefore abandon it. All that can be said of these forms is that there is a general tendency to settle down to the *cuck*-spelling, a tendency which can be seen just as well in the large table.

Having noticed the possibilities with respect to instances in which the method of punishment is specified, let us try another approach. Will consideration of the type of misdemeanor punishable by a contraption called by some variant of *cuck*- yield useful results?

We know already that as time passes, scolding women are most frequently the ones punished. Only 2, 13, and 33 direct that men are to be punished. In 2 any citizen who gives short measure in ale will go *ad cuckestolam*; what happens after the citizen of undifferentiated sex arrives there we are not told. In 13 any man or woman who scolds is to appear “on a cukstool afore there dore” and then be carried to the gates of Leicester; but this was but a brief outburst of women’s rights, for all of the other instances which are definite in this respect mention only “th’ unruly fair,” as the antiquaries of the nineteenth century liked to call these lusty viragoes, some of the earlier of whom were dignified by following a calling other than just scolding, for in 1, 5, 14, and 15, ale-wives who brewed their ale too small are condemned to have something not named done to them in connection with a *cokesstole*, *coking-stole*, *cockyng-stole*, *cukkyng stool*. Deceit in women in the woolen trade is

discouraged, according to a Statute of the Realm, by the *cuk-kyngstole* in 26, tricky women get washed in 37, and slanderers, scolds, and those distraining for the town's debts (men, surely?) get the *cokesstole* in 41. Exposition on the *cucking stole* for slander appears in 75, ducking on the *cockstoole* for slanderous words in 92. We seem to be restricted to observation alone, for no generalization with respect to function will hold. No sound classification emerges after our consideration of the method of punishment, the misdemeanors punished, the places in which the punishment appears, or the people punished, save that in this last respect women seem to have the preference; nor did our attempt to employ the forms of the word help.

There is another approach, however, which should be tried. With such a large number of forms available, can we not work backward chronologically and so hypothesize an Old English form? Among the fivescore forms we have relatively few duplicates, if we consider the entire word. If we restrict our attention to the first syllable, we find that in sheer numbers *cuck-* wins the day easily, this form being pretty well distributed from Number 2 to the last; if we add to *cuck-* the forms *cuk-* (five), *cukk-* (four), *cuc-* (two), we have a total of fifty-eight occurrences of forms which perhaps were intended to have substantially the same sound. This form, appearing in Middle English—2, 6, 7, 8, 12, 13, 14, 16, 20 (three times), 21—would be expected to have an Old English etymon in either long or short *-u-*, as do such words as *duck*, *puck*, *buck*, *pluck*, *run*, *summer*. This line is taken by the *Oxford Dictionary*, and has in its support not only the very numerous occurrences of the form *cuck-* after 1600 but the fact that as the form *cuck-* gradually disappears, its place is taken by *duck-*.<sup>51</sup> As before, we now wish that the method of punishment in these instances

<sup>51</sup> Cf. also Lorenz Morsbach, *Mittelenglische Grammatik* (Halle/Saale, 1896), *et* 122, 124; Otto Jespersen, *A Modern English Grammar*, I (1909), 83; Max Kaluza, *Historische Grammatik der englischen Sprache*, II (1907), art. 40, 42; Karl Luick, *Untersuchungen zur englischen Lautgeschichte* (Strassburg, 1896), art. 553; same author's *Historische Grammatik der englischen Sprache*, I (1921 f.), 569 Anm. 5; C. A. Reinholt, *Neuenglische on (ow)* [Palestra 189].

were specific enough to justify some speculation. In 2, 6, 7, and 12 we are not told, in 13 ducking is possibly implied, and in 14 and 21 exhibition is prescribed. This does not indicate whether the hen or the egg came first.

Another line is possible and from the Middle English point of view has about as much to recommend it. In 1, 10, and 18 the spelling *coke-* may show that a vowel longer than that in *cuck-* was intended. Perhaps merely capricious spelling is responsible for this variation, but since there are several such forms, my number to 1600 being twenty-one if *cok-* plus vowel is included, it will be well to consider it for a moment. Middle English *-ō-* is usually taken to have descended from O.E. *-ō-*, *-ō-*, *-ā-*, the date of the last change becoming later in the Middle English period as one passes from the Midland area to the north, until Scotland is reached, where the change did not occur.<sup>52</sup> An O.E. form *\*cāc-* could be conjured up, then, on the evidence supplied by 10 and 18, but what shall we say in view of 1, our earliest example, *cokestole*, which occurs in the very district in which O.E. *\*cāc-* would give Northern M.E. *\*cāc-?* Suggestion that the form *coke-* had migrated, along with the instrument, is rendered improbable by the date. The *cathedra stercoris* of Cheshire Domesday, which we cannot afford to leave out of account but which we do not know quite how to use, might point to an O.E. *\*cac-stol*, in which the *-ā-* would be short, not long. Again, consideration of the means of punishment in these three cases provides inconclusive evidence, for 1 and 10 are not specified and 18 indicates ducking.

The only apparent attempts to show what may have been a pronunciation with *-ā-* are 54, 68, 73, 77, 83, 84—*cowk-*, *couck-*, *cowk-*, *couck-*, *couk-*, *couck-*. These can be supplemented to my knowledge by but one other form, *Coucking Stooll*, in 1696 at Wreyland, Teignbridge, Devonshire. In none of these is the punishment clearly given.<sup>53</sup> These might repre-

<sup>52</sup> Kaluza, II, art. 250.13, 14; art. 366. Jespersen, art. 3531. Richard Jordan, *Handbuch der mittelenglischen Grammatik*, I (1925), art. 35.3, art. 44, art. 282. Henry Cecil Wyld, *A Short History of English* (3d ed., Oxford, 1927), art. 156 f., and cf. art. 163.

<sup>53</sup> *Wreyland Documents*, ed. Cecil Torr (privately printed, 1910), pp. 73, 88.

sent an O.E. form in *-ā-*, suggested by the *Oxford Dictionary*, as has already been pointed out.

Fourteen forms in *-oo-* next receive attention. The first is 9. Then follow 19, 31, 32, 48, 53, 59, 74, 76, 80, 88, 94, 99, and 103. What sound or sounds this spelling represented between the end of the fifteenth and the end of the sixteenth century it is hard to say. Probably it represented more than one pronunciation at different times and at the same time, too. Even today there is little agreement on how *-oo-* should be pronounced, in spite of rules of spelling that have been established for several generations. One hears slight variation today in the pronunciation of *foot* and *boot*, respectively; but what of *roof*, *root*, *soot*, *hoof* (plural?), for each of which one may hear at least three different pronunciations? The history of the various sounds represented by the modern spelling *-oo-* is one of the more highly involved topics in the intricate maze presented by the vowel-sounds in English. If we admit that this *-oo-* in the forms under consideration may have been pronounced like the vowel-sound in modern English *soap*, then 30 should be added, a curious form which has already been noticed. Now this *-oo-*-spelling seems in general to have descended from Middle English *-ō-* or *-ou-*. If the latter, the remarks on the preceding page apply. If the former, we should expect an Old English form in *-ā-* or possibly *-ō-*; i.e., the form would be *\*cāc-* or *\*cōc-*.<sup>54</sup>

Finally, let us collect those forms in which the spelling *cock-* occurs. Presumably representing a short vowel, 3, 4, 15, and 17 come from the Middle English period, and 22, 24, 34, 43, 44, 46, 65, 85, 89, 90, 92, 93, and 96 have it. This Middle English *-o-* is considered to have come from Old English *-o-*, and therefore the hypothetical O.E. form would be *\*coc-*.<sup>55</sup>

Only a generation later, in this same series of documents appears the form *Cuckeing Stooe*. It is not easy to find a reason for such changes, unless it be the erratic spelling of the clerks concerned.

<sup>54</sup> Kaluza, II, art. 391, 393. Jespersen, I, art. 8.23; cf. art. 11.68. Luick, *Historische Grammatik*, I, art. 485 Anm. 5. Jordan, I, art. 53. Wyld, art. 326; cf. Wyld's *History of Modern Colloquial English* (2d ed., Oxford, 1921), pp. 238 f.

<sup>55</sup> Kaluza, II, art. 250.12, art. 387. Jespersen, I, art. 3.511. Luick, *Historische*

Of these, 3, 34, and possibly 15 have exhibition as the punishment, whereas 65, 92, and 93 specify ducking.

One reason for the unsatisfactory results here is the presence of threescore of the fivescore forms which tell us nothing of the punishment—sixteen of the first twenty, in chronological order. Moreover, if we look at all of the occurrences from the purely local point of view, we find that many of the variations in the list can hardly be other than accidental and orthographic. At Leicester, for instance, the following forms have been reported:

cukstool	1467	kuckstole	1559
cockstolle	1548	Kockestol	1560-61
Cuckstole	1552	cucstoole	1563
cockystole	1557-58	cockstoole	1566-67
Duckstoole	1558	Cuckstoole	. 1578

Cuckstoole twice in seventeenth century

Of all these, unfortunately only the last two and the first one specify exhibition, the rest giving no information. Do these forms refer to different things? We can but weigh probabilities. To me the variant forms in *-o-*, *-u-*, and *-oo-* in this group seem to have no significance. At Norwich the forms are

cokestoole	1549	cokyngstole	1572
Cokyng-Stole	1563	cucke-Stool	. 1597

The first involves exhibition, the last three ducking. Variation of no significance is nicely illustrated by the sentence quoted by the *Oxford Dictionary* from the Manchester Court Leet Records of 1648:

Mary Kempe . . . Convicted for a Comon Scould and should have beene Cuckt by the last Constables. . . . The said Mary Kempe Cookt accordinglie.

A still later case of aberrant spelling perhaps is

1688. Aug. 24, P<sup>d</sup> for the reppare ye Cookin Sttooal and  
al charges for tto Duck Alis gones in. . . . 19 s. 6 d.<sup>56</sup>

*Grammatik*, I, art. 534. Wyld, *Short History*, art. 201, art. 244; but cf. Jordan, I, art. 35.

<sup>56</sup> John Nicholson, "Accounts of the Towcester Constables," in *Bygone Northamptonshire*, ed. William Andrews (London, 1891), p. 184.

That these terms and the usages which they denoted may have spread from one district to another goes without saying, but what the direction was, what the place or places of origin may have been, we do not have early and specific examples enough to enable us to ascertain. We cannot say with any reasonableness, let alone certainty, that the variations in spelling mean anything or nothing. In the absence of sufficiently precise details, and incidentally of accurate texts, we are thrown back on other resources in order to come as close as we can to solving the riddle of the *cucking-stool*; but before we proceed further, we shall glance at a handful of miscellaneous terms which may contribute something.

As we glance at them, it will be wise to reflect that one reason for variation may be that some localities may never have had the instrument in question. Nearly always when the record goes into detail at all, we find that the punishment is an alternative to a fine. A fine in hard cash is more satisfactory to a local organization than any punishment which is not remunerative; and although the people may have skipped for joy at seeing a woman ducked, there is no report that the local authorities ever charged admission to see the show. The system of government was so arranged that fines kept the whole thing going. Every Englishman paid a fine at least once a year in post-Conquest medieval England, thought Maitland. Getting money out of people on one pretext or another was more important than attending to their behavior. If the individual who had committed some misdeed real or imaginary should prefer to escape a humiliating public punishment by paying a fine, and if the local magistrates should agree with him or her that the fine is the better way, what of those higher up? The privilege of holding a local court involved certain obligations; whether they arose in this way, nobody knows; but that some of these obligations could be satisfied by payments of money we do know. Maintaining a pillory and so on was one of the obligations. Sometimes the *cucking-stool* was one of the things that had to be maintained; whether always, frequently, occa-

sionally, seldom, whether just in some parts of the country or everywhere, we have no means of knowing. Now, from various account-books we know that the cost of making a *cucking-stool* was relatively high, the actual figure of course growing higher as time passes and money becomes cheaper. Presentments at courts leet and the like constitute the great majority of the references that we have to the *cucking-stool*. Brushfield was puzzled at the frequency of presentment, for it looked as if the presentments were disregarded. They are frequent simply because they involved payment of a fine *unless* the instrument were provided within a given time, "as the law required." The payment of a few shillings' fine was preferable to the higher expense of making and keeping in repair the instrument itself. No doubt such an arrangement would be just as satisfactory to the next man higher up, because he in turn got money instead of the satisfaction of knowing that the letter of the law was being followed. In times of stress, when continuity might be broken through the coming of a new heir, through social disturbances, through absentee lordship, presentments might conceivably lapse over a period of years. The *petit peuple* went on paying fines to avoid some perhaps almost mythical punishment. Came then a jog from a magistrate purblind to pelf through puritanical zeal, or perhaps a new steward of the manor more devoted to the letter of the law than most, and old means of justice would be established once again. This possibly fanciful situation at any rate prevails in many quarters in our own days, as many a man who has repeatedly broken speed-laws or other purely local ordinances can testify.

The *Buckinge stoole* ordered made at Waterbeach in Cambridgeshire will cause us no difficulty if we remember that Falstaff was hidden in a buck-basket among the dirty linen. *Buckinge* was no doubt applied because it made sense, whereas *cucking* did not, to *buck* meaning 'to wash.'<sup>67</sup> Nor will a term

<sup>67</sup> Cambridge Antiquarian Society's Publications, octavo series, No. 4 (1859), p. 13, from Brushfield, p. 215. See also William Keatinge Clay's *History of the Parish of Waterbeach in the County of Cambridge* (1859), p. 13 (Cambridge Antiquarian Society, octavo publications, No. IV).

which I believe to be unique give us pause, for it fits into the framework easily enough. In 19 Charles I, at East Bergholt, Suffolk, this presentment was returned:

Villa de Eastbergholt non habet n<sup>o</sup> ollam Anglice a Ducking Stoole scdm statut in eo casu edit.<sup>58</sup>

Maybe the clerk meant to be humorous when he called the thing a kitchen-pot, but more likely he put down at random a name that occurred to him.

At Hitchin, Hertfordshire, at some time after 1650, scolds were to have the punishment of the *stoupe*, probably meaning the pillory, although at Darlington, county Durham, in 1615 "a stowpe of wood" was "employed to the Duckstoole."<sup>59</sup>

The town records of Kilkenny, some forty miles southwest of Kildare, show for 1333 a fraudulent ale-wife sentenced to the *swyngligstol uel castigatorium* if she offend seriously; otherwise she is to be fined. Probably very few offended "seriously," the ale-wife paying her fines much as if they were modern licensing-fees or taxes.<sup>60</sup> The possibilities here seem to be two. (1) The archaic verb *to swinge* means 'to beat'; and in Old English law appears the term *swingelle*, which Lieber-

<sup>58</sup> T. F. Paterson, *East Bergholt in Suffolk* (privately printed, 1923), p. 43. The fine assessed was 3d.: unless one was provided by May 1, a fine of 5s. would fall due. Since it would have cost considerably more than 5s. annually to keep a Ducking Stool going, my guess is that no "olla" was made.

<sup>59</sup> Reginald L. Hine, *History of Hitchin* (London, 1927), I, 56. This elaborate work is left with poor references; in this case, the most that can be learned is that this passage is an extract from the draft minutes of the Hitchin Manor Court Leet and Court Baron, 1650-1860, "MSS in the possession of Reginald L. Hine." See *Oxford Dictionary* s.v. *stoop*; *stoup* for pail or bucket probably does not apply. W. H. D. Longstaft, *History of Darlington* (2d ed., 1909), p. 285. Cf. Modern High German *Staupe*, 'pillory.'

<sup>60</sup> Brushfield, p. 205, mentions having seen but lost his reference to the form *swyngling stool*. Apparently the reference was *Transactions of the Kilkenny Archaeological Society*, I (1849), 48, in an article by J. Graves on Ancient Corporation By-Laws. The passage reads: "Si Pistor convictus fuerit, uel Braciatrix conuicta quod istas assisas non obseruauerint, primo, secundo amercentvr secundvm quantitatem delicti si non grauiter delinquerint, et si grauiter delinquerint—paciantvr iudicivm corporvm, scilicet Pistor Collistrigium, et Braciatrix swyngligstol, uel castigatorium." The passage might lead one to think that physical punishment was avoided out of humanity, but the reader of the old records will recognize rather the desire for cash behind the careful intention to assess fines instead of physical punishment. Coke (2. Inst. 172) quotes a pertinent maxim: "Qui non habet in acre, lat in corpore."

mann glosses as meaning punishment by the pillory. Hence this may have been a swinge-ing stool, either a place where the woman was whipped or just a place of punishment. (2) The swinge-tree (also *whipple-tree*, and in the United States and Australia *single-tree*) is a horizontal bar balanced in the middle used in harnessing a team of horses. The idea of balancing is involved in this use of *swingle*, and in view of one form of the ducking-stool, to which reference will be made later, this *swyngligstol* may then have been simply "a balancer."<sup>61</sup>

A curious form is presented by Thomas Blount in his *Law-Dictionary* in his definition of *cucking-stool*. He says in part: This was in use even in our *Saxons* Time, by whom it was called **gescalking-stole** and described to be *Cathedra, in qua rixosæ mulieres sedentes aquis demergebantur*. . . .<sup>62</sup>

For long I was skeptical of this *scealcing-stole*, for the sole occurrences of it that I knew were in this, in the same writer's *Fragmenta Antiquitatis, or Antient Tenures of Land*, where we are happy to be told that the word is "from Scealcing, Scolding," the gloss being for the language of "the Saxons," and in William Somner's famous dictionary, whence no doubt Blount got it. In this last the meaning given is

Sella urinatoria, in qua rixosæ mulieres sedentes aquis demergebantur, a ducking-stoole or fucking-stoole.<sup>63</sup>

No longer, however, do I regard it as a ghost of Somner's begetting, for at Barnstaple, Devonshire, in 1584-85, is the entry  
Paid to Walter Hooper for mending the stocks, the cage, and the  
skilfying stool 6s. 6d.

Similar in appearance is the item which we find at Exeter, only forty miles or so away from Barnstaple, in 1385:

<sup>61</sup> For *swingelle* see Felix Liebermann, *Die Gesetze der Angelsachsen*, glossary. Cf. *Oxford Dictionary* s.v. *swingling*.

<sup>65</sup> Thomas Blount, *Nomolexikon: A Law-Dictionary* (London, 1670; 3d ed., 1717).

<sup>65</sup> William Somner, *Dictionarium Saxonico-Latino-Anglicum* . . . (Oxford, 1659), s.v. *sealifing stole*. Where Somner came upon the word I do not know; I do not find Sir Henry Spelman or William Lambard using it. As for *sellaria minatoria*, that will be discussed later.

For the making of one skylnyngstole      xxd.  
For the carriage of the same to Crolle dieche      viijd.

And across the country, in Kent, in 1399-1400, the wardens of Rochester Bridge paid out money in order to guard the liberty of the lordship of Tilbury:

Blount's definition is not, however, one of his best, for there is no word *scealfing* in Old English, whether meaning 'scolding' or anything else. The only word at all similar is *scealfor*, which, cheerfully enough, means 'diver'; but that diver was no scolding woman but a bird, *mergus*, *mergulus*, *turdella*. Whether the *sceal-* has anything to do with the skeeling-goose, the sheldrake, the *Oxford Dictionary* does not say, preferring to regard the sheldrake as a *sheld-drake*, a parti-colored drake or duck. There is, however, a little series of words in Old English which may throw light on the *scealfing-stol*. There is the word *scilfrung* meaning 'shaking, balancing, swinging'; there is *scilbronge*, glossed *libramine*, which is a Medieval Latin word meaning 'a balance, a scale, a poise'; and, finally, there is the verb to which these are related, *scelfan*, 'to shake, quiver, totter'.<sup>165</sup> The *skil-*, *skel-* of Devon and Kent would seem to agree quite well with the *scil-*, *sceal-* of these Old English words, for one form which the ducking-stool took, as we shall see in a moment, was a kind of seesaw which teetered back

<sup>44</sup> *Barnstaple Records*, eds. J. R. Chanter and Thomas Wainwright, II (1900), III. The editors had seen Somner or Blount, for they say that *skylfing* represents Anglo-Saxon *Scælfing stol*. This is rather difficult phonetically. They add "some writers derive from L. *stercor* [sic]". I wonder who and how? Thomas Wright, "Municipal Archives of Exeter," *Journal of the British Archaeological Association*, XVIII (1862), 315. The reference is from Brushfield's *Collectanea*. A bare allusion is made to the "skylningstake or skylningystole" by Hugh R. Watkin, *History of Totnes Priory, Devonshire*, II (1917; privately printed at Torquay), 921. Totnes is some twenty miles southwest of Exeter. These three are all from Devonshire. For the one in Kent, see M. Janet Becker, *Rochester Bridge 1387-1856* (London, 1930), p. 94. For *skylnyng* should the reading be *skyluyng*?

<sup>46</sup> The Old English words are from Bosworth-Toller. Perhaps the bird called the *sealfor* was so named because of its balancing technique in turning under water for nourishment in the mud.

and forth as the incumbent of one end passed in and out of the water.<sup>66</sup>

*Gum-stool* is another term which needs explaining. At Worcester in the seventeenth century it was certainly used in two instances to punish "people"—women?—for scolding; in a third ducking is expressly indicated.

1623. Allowed the money for whipping of one Rogeres, and for carrying several women upon the gum stoole.

1625. For mending the stocks at the Grass Crosse, for whipping of divers persons and carting of other some, and for haling the goome stoole to the houses of dvs scolding people.<sup>67</sup>

The other instance in Worcestershire occurs in a tract by a man who, educated near Shrewsbury and a preacher for years at Kidderminster, came by his idiomatic use of the local term honestly. In the course of an impassioned argument against freedom of the press to criticize ministers adversely, the author of *The Saints' Everlasting Rest* says:

Is the seeking to deprive the Ministry of their lawful Maintenance, no breach of the eighth Commandment? Is the reviling of the Guides of the Church, no breach of the fifth Commandment? Do you order that silly women shall be dipt over head in a Gumble-stool for scolding, and breaking the peace of the Town? and shall men have leave to print their most impudent railings against Christ's Ministers and Churches, if they will but plead conscience for it?<sup>68</sup>

<sup>66</sup> Does this not explain, too, the forms listed as "of obscure origin" in the *Oxford Dictionary* under *shelve* *v.*<sup>3</sup> and *shelving* *ubl.* *sb.*<sup>3</sup>? The verb means 'to tilt or tip up';—"formation from *Shelf* *sb.*<sup>2</sup> or *sb.*<sup>3</sup> seems unlikely on account of the sense. Cf. W. Fris *skelf*, *adj.*, somewhat oblique, not quite straight or level." The verbal substantive means 'The tilting or tipping up of carts to deposit the load.' In the *English Dialect Dictionary* "shelve" as a verb means 'to dump' as of a cart.

<sup>67</sup> John Noake, *Worcester in Olden Times* (London, 1849), p. 110; and cf. his *Monastery of Worcester* (London, 1866), p. 515. Brushfield, p. 224: "dvs." means "divers."

<sup>68</sup> *The Worcester-shire Petition to the Parliament for the Ministry of England Defended* (London, 1653), p. 35; quoted in *Oxford Dictionary* s.v. *gumble-stool*; since it is not included among Richard Baxter's works in the *QD*'s list of sources or in the British Museum Catalogue under Baxter's name, I add that it is to be found among the Thomason Tracts at the British Museum, pressmark E.693 (18). We might agree that if scolds were ducked, freedom of the press was logically not necessary, but for different reasons from Baxter's. For *goomstool*, *gomstol*, see also

The gum-stool is mentioned elsewhere at Leominster, in 1571, 1577, and 1668. Inasmuch as these cases are interesting particularly in respect to similar entries, and there are several extracts from (a) the presentations of juries and (b) the chamberlains' accounts, it will be useful to quote the extracts; and, incidentally, these show the sort of entry for *cucking-stool* which I have heretofore restrained from quoting because they give us so little information.

(a) 1563. It<sup>m</sup> p<sup>r</sup>sen<sup>t</sup> q<sup>d</sup> Inhabitan. hūj. Burgi non fecerunt le Cookyng-Stole per diem eis p<sup>r</sup>fixum—in miser<sup>m</sup> poena de xx s.

(a) 1564. It<sup>m</sup> we fynd a Payne of xx. loste by the Chamberlaines for that they dyd nott make a Cokyngstole by the day to them p<sup>r</sup>fixed; and it is ordered that the seid Chamberlens do make a Cokyngstole by Mydsomer next under the Payne of xx.

(b) 1571. It<sup>d</sup> for mendyng the Gomstole viijd.

(b) 1577. It<sup>m</sup> for reparyng the Gumstoole at iiiij sev<sup>r</sup>al times xvijd.

(b) 1595. It<sup>m</sup> for tymber for reparyng the Tumbrill and Pillory vijs. 6d.

(b) 1634. It<sup>m</sup> to John Gwatkyn for an earnest vijd., and for making the Cage, Pillory, and Cucking Stoole xi l. vs.

(a) 1638. It<sup>m</sup> they present Francis Shoter, Gent., late Baylif, and the Chamberleynes of this Borough to have incurred the Payne of x lib. for not reparyng and amending the Cage House, the tumbrel or Cucking Stoole; and it is ordered that the same be repayred before the feast day of St. Michaell the Archangell now next coming, upon Payne of x lib.

(a) 1650. It<sup>m</sup> they present the Bayliffe and Constables of this Borough for not having a Gumstole for scolding women, that they may be punished according to the Statute in that case made and pvided; and it is ordered that they pvide a Gumstole before the xxth of June next upon the paine of £5.

John R. Burton, *History of Kidderminster* (London, 1890), p. 57, and *Original Charters of Worcester*, ed. J. Harvey Bloom (Oxford, 1909), p. 125 (Worcestershire Historical Society).

(b) 1661. For mending the Ducking Stool	2s.
(b) 1668. For mending the Gumstool	1s. 6d. <sup>69</sup>

We agree wholeheartedly with the historian of Leominster when he complains that "there is a contrariety and inconsistency difficult to be accounted for" in these accounts, and we might add that the same characteristics prevail in many another series of records; not so readily, in view of Somner and Blount, can we agree with him that the *cucking-stool* "was originally among the Anglo-Saxons a very simple punishment. It was nothing else than the setting the man or woman on a 'stool of use,' and thus exposing the culprit in a disgraceful posture to public derision and opprobrium. . . ." The evidence which the reader has seen in these pages is much more complete than that available to Townsend, or to Way, whom he here follows, and we cannot yet reach a satisfactory conclusion.

The only other appearance of the term known to me is *gomstole* as equivalent to *cuckingstole* (undefined) at Northleach, Gloucestershire, some thirty miles southeast of Worcester, in 1577.<sup>70</sup>

Neither the *Oxford Dictionary* nor the *English Dialect Dictionary* includes an entry for *gum-stool*; the former does have *gumble-stool*. It is doubtful in its origin, but suggests that it may have something to do with *gum* meaning "insolent talk, chatter, 'jaw,'" a slang usage which we can understand from hearing 'lip' and 'cheek' used in much the same sense, the basic meaning of *gum* here being 'flesh of the jaws,' a word which appears in Old English with that meaning.<sup>71</sup> That a piece of apparatus used to punish scolding women should take its name from a slang term for the condemned activity seems reasonable enough, although we do not have enough occurrences of *gum*

<sup>69</sup> George Fyler Townsend, *The Town and Borough of Leominster* (Leominster and London, n.d. [1863]), p. 318. The bibliographical note, pp. 315 f., is based largely upon Way's in his edition of the *Promptorium Parvulorum*. F Gainsford Blacklock reprints from Townsend in *The Benedictine Minster . . . of Leominster* (Leominster, 1900), pp. 422 ff.

<sup>70</sup> *Trans. Bristol and Gloucs. Archaeological Society*, VII (1882-83), 102.

<sup>71</sup> See the semantic notes on *gum* in this sense by Samuel Kroesch, *Journal of English and Germanic Philology*, XXI (1922), 614 f.

in this sense to enable us to ascertain whether it had the serious connotation which 'scolding woman' had as equivalent to *rixatrix*, or involved merely impudence and effrontery, as would appear from the definition quoted from the *Oxford Dictionary*, which applies also to 'check' and 'lip.' The possibility that we have here the genuine origin of *gum-stool*, with *gumble-stool* as an easy associate, cannot be dismissed, but I find the existence of the word *gum-stōl* in Old English meaning 'throne,' the great chair of the ruler, in no pejorative sense, of considerable interest in view of the long life of the institution of which we are attempting to unravel the story. The objection that it is a long leap in time from the Old English period to 1571 cannot be countered with the statement that there is but slight shift from West-Saxon England to modern Herefordshire and Worcestershire, for the fact remains that I can bring forward no evidence that O.E. *gum-stōl* meant anything but a throne. The *cathedra stercoris* of Cheshire Domesday means what? The first word fits well enough with the meaning of *gum-stōl*. Who was the scribe of this section of Domesday? We have no facts. In the absence of them, suppose we speculate freely for a moment. He might well have been a Norman confronted with a punishment having a completely unfamiliar name which he must somehow reduce to the Latin of his record. The idea of an imposing thing to sit on he gets readily enough from his English associates. He puts it down duly as *cathedra*. Whatever the Old English term for the punishment may have been—this, be it noted, is mere speculation, for we cannot even assert that the punishment was known to the Anglo-Saxons—the word *gum-stōl*, mentioned in an effort to explain the concept 'great chair,' sounds to the Norman a little like one of the Medieval Latin terms for close-stool, *gumphus*; and after *cathedra* he jots down *stercoris*, describing a to him unique form of punishment in a pair of words which in this association also are unique—and incidentally sending our wits off on far-fetched piling of conjecture upon conjecture so imaginary as to carry little conviction.<sup>72</sup> Yet there is a fact or two

<sup>72</sup> In the Supplement to *Ælfric's Vocabulary* printed in *Anglo-Saxon and Old*

still available. Cheshire *Domesday* did *not* use the expression "in gumpho ponebatur," the natural one for it to have used if the meaning which Townsend thought he perceived were the right one; and it did use "in cathedra ponebatur stercoris," a most unusual expression which will indeed yield to word-for-word translation but which nevertheless is not current Medieval Latin; and one thinks of the distinguished scholars who have labored faithfully and long to extort meanings from the strange language of *Domesday Book*, a language which has clear enough title to strangeness, being as it is the transmutation of technical expressions from Anglo-Saxon to Latin through what must often have been the sorely puzzled minds of Norman inquisitors unfamiliar alike with the language and the institutions of a conquered Germanic folk with Celtic associates. In this case, as in others like it, the fine, not the punishment, was the important thing.

Later we shall return to these matters, but for the moment we shall resume our inquiries with another term used by some men as a synonym for *cucking-stool*.

One of these men is that devil's advocate already referred to, Thomas Blount. In his *Fragmenta Antiquitatis* he says, in commenting on a passage quoted from a custumal of Montgomery,

Scolds and Whores are adjudged to the *Gogingstoole*. This *Gogingstoole* is the same which in our Law-Books is written *Cuckingstool* & *Cokesstool*; antiently *Tumbrel* or *Trebuchet*. . . .<sup>78</sup>

This statement was seized by White Kennett (1660-1728), Bishop of Peterborough, who among his amazing activities as controversialist, student of Anglo-Saxon, biographer of William Somner, early bibliographer of Americana, and author of

*English Vocabularies*, ed. Thomas Wright and R. P. Wulcker (2d ed., London, 1884), p. 627, *gumphus* is glossed "þe hoole of a prevay," and a merry jingle is added. That *gum* in *gum-stool* did not in seventeenth-century Worcestershire have any association with *gum*- in *gumphus* seems clear from the Worcestershire petition quoted above.

<sup>78</sup> London, 1679, p. 151, ed. Beckwith (York, 1784), p. 282; ed. W. C. Hazlitt (London, 1874), p. 222. The careless supplement (London, 1909) has nothing additional on this point.

parochial antiquities, somehow found time amidst his ecclesiastical occupations to compile a two-volume etymological dictionary which reposes among the hundred-odd tomes of his collectanea in the Lansdowne manuscripts at the British Museum. Under the word *Goging stool* he writes

A Ducking stool, Cucking-stool: called in Domesday Cathedra stercoris. Properly a Gonging-stool, Gong-stool or Gang-stool. Sax. gongz-stole. Sella familiaris, a close-stool.<sup>74</sup>

Unfortunately for the reputation as a lexicographer of the energetic bishop, W. W. Skeat was moved to vigorous castigation in a study of a glossary by him. "Meaning," he says, "is made to depend on the *supposed* etymology. By this process of self-deceit, a man comes to prefer falsehood to truth. . . . It may be doubted whether this glossary can be safely trusted where it happens to be wholly uncorroborated."<sup>75</sup>

We may safely drop Bishop Kennett as an authority, first noting that no doubt his hand is responsible for the entry in his edition of John Cowell's *Interpreter* published in 1701, for *goging stool* does not appear in earlier editions. But what of Blount? In this instance he gives his source, a custumal of the town of Montgomery, "temp. Henry II," which Mary Bateson dates 1486 or soon after; Blount's form *Gogingstole* she corrects to *Goggynstole*, although of course we cannot know whether she used the manuscript which Blount saw.<sup>76</sup> Moreover, from the same source Blount gives in his *Nomolexikon* (1670) the only other occurrence of the term known to me. Miss Bateson does not refer to it. It is particularly interesting to us because it draws together the punishment for scolding and for brewing deceitfully. Too long to quote in full, the passage informs us that the *Pandoxatrix*, the ale-wife, must

<sup>74</sup> MS Lansdowne 1033.

<sup>75</sup> English Dialect Society, Series B: *Reprinted Glossaries*, XVIII, ed. W. W. Skeat (London, 1879), pp. 2, 3. The glossary referred to was being prepared concurrently with the etymological dictionary, and the methods of the compiler were identical.

<sup>76</sup> *Borough Customs*, ed. Mary Bateson, I (1904), xxxiv, 79 f. The text of the pertinent passage in the Hereford custumal, which is almost identical with that of Montgomery save for the word itself, is given in full here, *post*, p. 73.

brew according to the assize; if she does not, she is to be amerced for the first two offenses, and for the third

she is to be seized by the chief bailiffs and publicly led to the place where the *Gogingstole* stands, and there she must choose one of two things; to wit, whether to ascend the *Gogingstole* or redeem the punishment at the will of the bailiff.<sup>77</sup>

Whether the form was *Goging-* or *Goggyn-*, I agree with the *Oxford Dictionary* in regarding it as merely a variant of *cuck-ing-* or *coking-* or *cocking-*, easy enough to understand if oral transmission played any part. Thomas Blount, by the way, native of Worcestershire, lived for many years at Orleton, Herefordshire, less than twenty miles north of Hereford, about thirty miles from Montgomery, and but two miles from Leominster. His interest in legal antiquities would naturally take him to the custumals of towns in his immediate neighborhood.

<sup>77</sup> Ex Codice MS. de Legibus, Statutis & Consuetudinibus liberi Burgi Villae de Mountgomery, a tempore Hen. 2. fol. 12. b.—Blount's reference. The text of the passage translated above is, “& si tercia Vice Assisam fregerit, debet capi per Ballivos Capitales, & publice Duci ad locum ubi situatur *le Gogingstoole*, & ibi debet eligere unum de duobus, viz. An velis *le Gogingstoole* ascendere, an illud iudicium redimere ad voluntatem Ballivorum.” Note that in the *Nomolexikon* Blount gives *s.v. objurgatrix* the other passage in question, on scolds.

Here we have a muddle which throws into striking relief the thoroughly unsound state of the forms which we are compelled to use in this study. Miss Bateson, *op. cit.*, I, xxxi, refers to the English translation (of the time of Charles II) of the Hereford custumal edited by W. H. Black and G. M. Hills, *Journal of the British Archaeological Association*, XXVII (1871), 453 ff.; on page 485 the passage on the ale-wife reads: “if she brake the assize the third time, she ought to be taken by the bailiff of that fee, and to be led to the judgment which is called the *Gongestole*, which shall be and is upon the fee of our Lord the King, and there she ought to choose one of the two; that is to say, to undergo that judgment, or else to redeem the said judgment at the will of the bailiff. And if she choose the judgment, let it be done unto her publicly, and let her sit there so long time as the baker did upon the pillory.” The time is not specified for the baker. The passage on scolds, on page 485 also, is obviously translated from one very similar to that which I reproduce at page 73, *post*. In his *Ancient Customs of Hereford* (2d ed., London, 1882), p. 42, Richard Johnson, Town Clerk, gives the form as *gonge stool* in whatever manuscript he used. Thus we have four different forms seen by these people, perhaps in four different manuscripts. Of them, Mary Bateson deserves the greatest confidence, but even she working at one manuscript is not the equal of a critical text, which is the obvious need for the custumals of Hereford and Montgomery. The word *gong* means primarily ‘a privy.’ Is the word a corruption of misunderstood *goggyn*, or was it used by the translator of the Restoration time because the instrument looked to him like a *gong*?

As we have seen, several of the antiquaries of the sixteenth and seventeenth century whose preoccupations included the history of the laws of England have mentioned our word, usually giving synonyms. To these synonyms for *cucking-stool* or *cuck-stool* we shall continue to give attention in the fashion already used, allowing the original texts to speak for themselves as much as they will and remaining as free as we can of the vice of reading modern meanings into ancient texts. In the quotation already made from his *Institutes*, Lord Coke gives *trebuchet* as a synonym. Can we learn what it was?

The earliest occurrence of the word in the sense which interests us carries us again to the temptations which beset those important middlemen, worthies of the golden thumbs, the baker and the miller. Jocelin of Brakelond's chronicle of the Abbey of Bury St. Edmunds reports that men on the abbot's lands set up "quoddam trebuchet" to work justice for false measures of bread or grain, this presumably between 1187 and 1200.<sup>78</sup>

At about the same time, King John granted privileges to the church at St. Alban's, such as toll, and "tribuch."<sup>79</sup>

In the *Statutes of the Realm*, listed as of uncertain date but perhaps from the fifty-first year of the reign of Henry III—about 1270, then—appears the *Assize of Bread and Ale*.

If a baker prove faulty many times and will not be amended, then he shall suffer corporal punishment, that is, the pillory. . . . Likewise, a female brewer shall undergo the *trebuchet* or castigatory if she be found faulty many times and will not be amended.<sup>80</sup>

<sup>78</sup> *Cronica*, ed. Rokewode (London, 1840), p. 38, ad an. 1187 (Camden Society, Old Series, XIII); see the edition of Thomas Arnold, *Memorials of St. Edmund's Abbey*, I (1890), 256, and glossary, p. 377, where the word is glossed as meaning 'assay-scales.' If taken by itself, this passage might yield such an interpretation, but rather than a pair of scales I think this means an instrument of punishment, which would indeed correct the using of false weights, for the words, "quoddam trebuchet ad faciendam justiciam" seem fairly definitely to imply punishment; Arnold's gloss makes it too abstract.

<sup>79</sup> *Carta Jon. Regis, Dat. 11 Junii, Anno 1 regni*; quoted by Thomas Blount in his *Law-Dictionary* (3d ed., 1717), s.v. *Tribuch*: *Haec omnia concedimus Deo & Ecclesiae Sancti Albani, cum Sicca & Sacca, on Stronde & Streme, on Wude & Feld, Toll & Teym, Tribuch.* . . .

<sup>80</sup> Note "many times," the fine being preferable. *Statutes of the Realm* (Lon-

If we felt confused when confronted by the original texts for the ducking-stool, how much more confused are we here, for in citing mere occurrences of this word *trebuchet*, we find not one which is even as definite as those for the ducking-stool. We seem vaguely to be moving in the same general territory, but the only concrete thing we learn is why scholars of later centuries bracketed the two—both were used to punish brewers of small ale. The latest one which I shall include here comes from a custumal of Kirkham drawn up in 1296; and it again merely tells us that Kirkham, like any free borough, was expected to discourage potential evildoers or to punish actual malefactors and transgressors by maintaining a prison, a pillory, and a “tribleget.”<sup>81</sup>

Whatever the instrument may have been, this name hardly became firmly established in English usage outside the more formal law-books. It was known to Coke and to later scholars

don, 1810), p. 200: “Assisa panis et cervisie. Eodem modo fiat si pluries deliquerit [pistor] & castigari noluerit, tunc pacetur judicium corporis scilicet collistrigium si defecerit in pondere panis quadratus circa ij s. ut praedictum est. Simili modo Braciatrix subeat trebuchetum vel castigatorum si pluries deliquerit, & castigari noluerit.” The last two words could be rendered “and if she does not want to be punished,” a different sense from that in the translation quoted in the text. This passage is to be found in collections printed earlier than 1810, e.g., in *Magna Carta cum alijs antiquis statutis . . . Secunda pars veterum statutorum* (Impressis Londini in edibus Thome Bertheleti . . . 1532), fo. 48.

<sup>81</sup> “Et quod habeant in eodem burgo carcerem, pilloriuni et tribuleget et alia huiusmodi iudicaria instrumenta quae ad liberum burgum pertinent, per quae malefactores et transgressores contra libertates ipsius burgi possint custodiri et castigari,” in *British Borough Customs 1216-1307*, ed. Adolphus Ballard and James Tait (1923), p. 170. The editors translate *tribuleget* as ‘ducking-stool,’ a seventeenth-century writer by ‘gibbet or cuckstool.’ Miss Greta Hjort called my attention to this item. Under *nomina arborum*, a Pictorial Vocabulary of the latter part of the fifteenth century (*Anglo-Saxon and Old English Vocabularies*, ed. Thomas Wright and R. P. Wilicker, 2d ed., 1884, p. 784), there is the gloss “Hoc tribucetum, Ance [Anglice] a pytfalle,” along with “magnalium a gyn” and “brida a trappe”; this glossator, then, knows the *trebuchet* only as a trap. At page 812 we find “Hoc tribucetum, Ance a sawtre,” of which I can make nothing unless the glossator had a dictionary-knowledge only of the words concerned and got the timbrel (“psaltery”), musical instrument, mixed with the tymboralis, cartlike instrument of punishment which we shall turn to in a moment. What may be a late occurrence of the word should be mentioned here also. George Shaw (*Old Grimsby, Grimsby and London*, 1897, p. 106) says that people called to a scold, “Beware of the Trebucket!” Although he quotes thus, he gives no date and no source.

only from its preservation among the statutes of the realm. It was not much used, except by antiquarians, as a name for an instrument for punishing ale-wives or anybody else, and in fact it had very nearly disappeared from the language, except among those same antiquarians, by the seventeenth century or even earlier.

The short life of the term does not justify us in abandoning it too abruptly, however; its use at any time suggests that we have a look at its etymology. The fact that it is a loan from French makes us suspect at first that a punishment of that name may have been used at some time in France; but no such punishment is forthcoming. The primary meaning of the word in Old French was "a mediaeval military engine for casting heavy missiles," says the *Oxford Dictionary*, a primary meaning which held good for both Old French and its imitator in cultural matters, Middle English; "described," continues the same authority, "as consisting of a pivoted lever with a sling at one extremity, which was strained back against a heavy counterpoise, and then suddenly released. Cf. *Catapult*."<sup>82</sup>

Among French lexicographers, Littré finds the same meaning and adds a secondary one: a trap for birds, whereas Hatzfeld-Darmesteter-Thomas give only the latter. They agree that the noun springs from the verb *trebucher*, 'to stumble'; but the only venture is to suggest the combination *\*trans-buc-*, the Latin preposition plus the Germanic stem represented in Modern German by *Bauch*. To reduce to a "least common idea" the

<sup>82</sup> Illustrations of this military engine may be seen in Roberto Valturi, *Precessi militari* (Verona, 1483), fo. [D viij] and following. One wholly impractical machine for raising a man above the height of a castle wall so that he might shoot inside or perhaps mount the wall, is shown at fo. C i. A seesaw of wood has at one end a tun occupied by an armed man who is elevated when the opposite end is pulled down. More practical devices, for slingng stones and darts, are pictured in Francis Grose's *Military Antiquities* (2d ed., London, 1812), I, 365, and II, 18. Viollet-le-Duc, *Dictionnaire raisonné de l'architecture française du XI<sup>e</sup> au XVI<sup>e</sup> siècle*, X (Paris, 1861), 227 ff., gives Guillaumot's modern drawings, which are reproduced also by Camille Enlart, *Manuel d'Archéologie française . . .*, II (Paris, 1904), 444 f. Hans R. Hahnloser has some remarks on the subject in his edition of Villard de Honnecourt's architectural album, MS. B.N. fr. 19093 (Wien, 1935), pp. 159-162. Plate 59 conveys only a vague impression. The trebuchet as a military engine is discussed by Robert C. Clepham in *Archæologia Æliana*, Ser. II, XXIV (1903), 69-114.

French military catapult and trap for birds and the English legal device, we need first to picture what little boys in America under the tutelage of the late Dan Beard used to call a "figure-four trap"—three slender sticks notched and pointed in the proper places, set up like a 4, with an inverted box resting on the topmost point. The prospective victim disturbs bait attached to the horizontal bar at the back of the 4, well under the box, and down comes the whole thing, the diagonal stick describing the trajectory of the off-center motion performed by the catapult when it throws a stone. In similar fashion, one conjectures that the application of considerable weight, that is force, to the short arm of a lever, thus producing the wide trajectory of an object attached to the end of the long arm, is the principle on which the English device operated, the object attached to the long arm being some container for the fraudulent baker, who "falleth down into a pit of water" and is then pulled out by the leverlike motion of the trebuchet. Ducange knows *trebuchetum*, *trabuchetum* only as "catapultae species, seu machina grandior ad projiciendos lapides, et concutiendos urbium obsessarum muros," although he refers to the idea of stumbling s.v. *trebuchare*.<sup>83</sup> Without attempting to set up a new etymon for *trébucher*, I should like to point out that whatever the relationship may have been originally between the verb meaning 'to stumble' and the noun designating the military engine, in both the action of stumbling and the action of throwing a heavy projectile we have off-center motion, off-balance motion, of a heavy object. Moreover, one of the striking features of the military engine was the long beam describing its trajectory through the air as the missile at the end of it was started toward its mark. There is a Classical Latin word for 'beam, roof-tree, trce,' which both because of its form and its meaning might have something to do with our words here, *trabs*, *trabis*.

A good idea of the application of the principle underlying the military engine to the instrument of punishment can be

<sup>83</sup> Cf. also the *Dictionnaire étymologique de la langue française*, ed. Oscar Bloch and Walther von Wartburg (Paris, 1932), s.v. *trébucher*

had from an undated sketch of the ducking-stool at Leominster as it stood, no longer used, in the church there more than a century ago. The similarity is unmistakable, and the descent seems obvious enough when the two ideas are brought together, although nobody at Leominster suspected that the town's ducking-stool owed its form to a medieval French "siege-gun." On a platform supported by four wooden wheels, a framework of wood in turn supports by a pin a long beam at the end of which is fixed a chair-bottom and back. This beam receives leverage from a pair of shorter beams, so that when the end bearing the chair descends, pressure on the second of the pair of levers will force it up again.<sup>81</sup> In spite of the indefiniteness of the records, we pass on with a better notion of the trebuchet than we were able to muster for the ducking-stool.

Just before he mentions the trebuchet in the Third of his Institutes as quoted above, Lord Coke adverts to the "Tumbrell . . . , a word in use at this day for a Dungcart. Bracton calleth it Tymboralem." Whether he knew more of it than he could glean from his books it is difficult to say, for he goes on:

Infligitur poena corporalis, sc. pillorialis vel tumberalis cum infamia. Secundum regni statuta, It is called tumbrellum, there being no proper latin word for a Dungcart.

Furce Pillot [sic] & Tumbrell append al View de Franckpledge. And every one that hath a Leet or Market ought to have a Pillory and Tumbrell &c. to punish offenders, as Brewers, Bakers, Forestallers, &c.

His authorities showing some confusion or rather indefiniteness as to what the punishment was, apparently Lord Coke does not attempt to resolve the difficulty, leaving upon his reader the impression that it is both equivalent and additional to the pillory, and involves a dung-cart; but he is not alone, for before him William Lambard, and after him Thomas Blount and Sir

<sup>81</sup> George Fyler Townsend, *The Town . . . of Leominster* (1863), p. 318. No information about the sketch is given. Curiously enough, Townsend describes in his text the operation of a ducking-stool which was worked like a seesaw, and has in common with the one in the sketch only the base. This latter is of course the simpler form of the two and is therefore less likely to get out of order.

Henry Spelman, to name no others, very plainly knew no more than he about the tumbrel.<sup>85</sup> Coke was quite right, as we should expect him to be in such a matter, in associating the tumbrel with view of frankpledge and leets and markets. This is demonstrated beyond doubt by a host of witnesses who need not be brought forward here. It is sufficient to give a specimen or two as representatives of the almost innumerable examples ranging from the Statutes of the Realm to the customs of boroughs and manors and markets.

Earliest is Bracton's remark in 1223 that a tumbrel had been erected without warrant, and in his *De legibus* (1250) whipping and punishment by pillory and tumbrel are mentioned among kinds of punishment.<sup>86</sup> *Brasiatori ad tumbrellum debent condempnari* is the direction of the borough charter of Farnham in 1247 in connection with the enforcement of the Assize of Bread and Ale; and some twenty years later, the Statutes of the Realm charge that it be inquired into whether stewards or bailiffs remit the punishment of the pillory or tumbrel, *judicium pillorie vel tumbrelli*, and in addition, ale-wives who brew contrary to the Assize of Ale are to be fined or sentenced to the tumbrel—*Braciatrices . . . judicium tumbrelli*. Perhaps

<sup>85</sup> William Lambard, *Eirenarcha* (London, 1581), p. 68 (Lib. I, cap. xii): "Corporall punishment, is either *capitall* or *not capitall* . . . *Not capitall*, is of divers sorts also, as cutting off the hand, or eare, burning (or marking) the hand or face, boaring through the eare, whipping, imprisoning, stocking, setting on the Pillorie, or *Cucking stoole*, which in old time was called the Tumbrell . . . our old lawe (making precious estimation of the hues of men) had more sortes than wee nowe haue: as *pulling out the tongue* for false rumours, *cutting off the nose* for adulterie . . ." This sounds somewhat like Bracton III, vi, *De generibus poenarum*, the addition of *cucking-stool* being apparently Lambard's own. On the matter, see Charles A. Beard, *The Office of Justice of the Peace* (New York, 1904) (Studies in History, Economics, and Public Law, XX, 1), p. 441, but see also Bertha Haven Putnam, *Early Treatises on the Practice of Justices of the Peace* (Oxford, 1924) (Oxford Studies in Social and Legal History, VII). Thomas Blount, in *A Law-Dictionary* (1717; first ed. 1670), gives, s.v.: "Tumbrellum . . . is an Engine of Punishment, which ought to be in every Liberty that has View of Frankpledge, for the Correction and Cooling of Scolds & unquiet Women. . ." Henry Spelman, *Glossarium Archaeologicum*, merely quotes from a statute of the time of Edward I which throws no light on this topic (3d ed., London, 1687, s.v.). From the first, trebuchet and tumbrel seem to have been interchanged loosely. In 1236 at Wallingford the trebuchet was repaired, in 1234 the tumbrel—*Reports of the Historical Manuscripts Commission*, VI (1877), 580.

<sup>86</sup> *Note-hook*, ed. Maitland, III (1887), 504; *De legibus*, III, vi.

carelessness in administering the punishment had resulted in serious accident, for those responsible for it are adjured to see that the pillory and tumbrel be strong enough to preclude loss of life and limb. According to another statement, those who brew contrary to the assize shall be fined for the first three offenses, but for the fourth shall undergo the punishment of the tumbrel "sine redemcione."<sup>87</sup> No doubt it is upon these statutes or upon Bracton that Britton bases his observation, toward the end of the century, that a man may be lord of a domain only if he maintains the punishments appertaining thereto, and the same origin must be imputed to municipal records such as those of London about 1275, according to which all bakers were expected to bring in bread for inspection; those whose loaves did not weigh up to specifications were not put into the pillory as they used to be, but, contrary to the ancient custom of the city and of the whole realm, were raised aloft in the tumbrel.<sup>88</sup> According to what Skene calls "The Unlaw of

<sup>87</sup> For the charter of Farnham, see *British Borough Charters*, ed. Ballard and Tait (1923), p. 221; *Statutes of the Realm* (1810), I, 201 ff. The pillory, "pilloria, sive collistrigium," as it is called here, is adequately explained by Coke as above: "Pillory is a French word. . . . Et est lignea column, in qua collum insertum premitur, and thereupon in law is called Collistrigium, quia in eo collum hominum constringitur. . . ." Note that the continued use of Law French and Law Latin as it were *in vacuo* naturally encouraged the use of abstract as opposed to concrete expressions.

<sup>88</sup> Britton, ed. Francis M. Nichols (Oxford, 1865), I, 91: ". . . s'il eit les juyses qe a celes fraunchises appendent, sicut fourches, pillori et tumberel." Cf. I, 61, 75, and 191 for obvious echo of the statute respecting safe instruments. The *Liber de antiquibus legibus*, ed. Thomas Stapleton (London, 1846), p. 41 (Cauden Society), gives, ". . . et illorum panes non ponderaverunt secundum assayum Civitatis non fuerunt positi in pillorio sicut antea solebant, sed pro voluntate predictorum Justitiarii et Comiti, contra antiquam consuetudinem Civitatis et totius regni, exaltati fuerunt in tumberella." Cf. Brushfield, p. 212, who gives Fabian's version of this "innovation" and suspects that the objection is due to the restriction before this time of the punishment to women; but at Farnham in 1247, at Cambridge in 1268 the tumbrel was used for such offenses, as we learn in *British Borough Charters* (1923), pp. 221, 222. Butchers also are included by Fleta ca. 1290 (ed. Selden, 1647, II, i, 8; cf. the ed. by David Ogg, Cambridge, 1925). In the second year of King John's reign, the community of Grimsby was fined ten marks for inflicting punishment of tumbrel upon a woman—Thomas Madox, *History of the Exchequer* (London, 1711, and 2d ed., 1769), I, 504. Probably the Londoners simply were not more careful of the historical accuracy of their language than such petitioners usually are. Their objective is not the same as that of the historian.

Bread and Ail," in the *Leges Burgorum* of Scotland of the first third of the thirteenth century, the cheating ale-wife was placed on the tumbrel; and the repetition goes on and on, the *Assyse of Bread* printed by R. Wyer about 1543 reading, for instance,

And they that breke the assyse of breade and ale . . . the fourth tyme the Baker shall have the Judgement of the pyllorye: and the brewer of the tumbrelle.<sup>89</sup>

One occurrence more, and we shall leave these sands of the sea unnumbered. At Kilkenny, in the fourteenth century, a butcher who sold tainted meat or bought from Jews to sell to Christians, or just anybody committing "enormia," was punished by the tumbrel.<sup>90</sup>

<sup>89</sup> *Regium Majestatem Scotiae, veteres leges et constitutiones . . .*, ed. John Skene (London, 1609), fo. 104, v<sup>o</sup>; ed. 1613, fo. 134, v<sup>o</sup>; "Si aliquis vel aliqua sit in foris-factio de pane vel cervisia, nullus debet se inde intromittere nisi Praepositus . . . Et si tertio foris-fecerint, justitia de eo vel de ea fiet (videlicet pistor ponatur super collistridium [sic; glossed "collistrigium"], quod dicitur *pillorie*, Brasatrix super tumbrellum, (quod dicitur castigatorium).)" Eng. trans. by Skene (1609), p. 121, renders *tumbrellum* as 'Cockstule.' 1543: Here begynneth the booke named the *Assyse of breade*, what it ought to weye after the pryce of a quarter of wheate. R. Wyer. . . . [1543?], fo. c iii, v<sup>o</sup>; see Pollard and Redgrave, *A Short-Title Catalogue . . .*, No. 865. *The greate abydgment of all ye Statutes of Englade untyl the xxxiii yere of . . . Henry the eyght . . .*, printed by William Middleton in 1542, uses almost identical wording, as one would expect. Perhaps here should be mentioned the definition, quoted by the *Oxford Dictionary*, in *The Dictionary of syr Thomas Elyot knyght* (Londini in aedibus Thomas Bertheleti . . . 1538): "Numellae, a tumbrelle, wherein men be punysshed, hauyng their heedes and fete put into it." This use of the Latin word meaning 'shackles for prisoners or cattle' as equivalent to 'pillory' occurs elsewhere, as does the pillory's being taken for the tumbrel as well as for theucking-stool. Whether they may have been the same things in some places or were thought to be the same because they frequently appeared together in law-books is impossible to say.

<sup>90</sup> "Ancient Corporation By-laws," ed. J. Graves, *Trans. Kilkenny Arch. Soc.*, I (1849), 48, for the year 1333: "Item siqui Carnifex caines vendant suffematas, vel de morte morina, vel siqui omant de Judeis, et eas vendant Christianis pati debent iudicium Tumberelli." In 1337: "Si aliquis inventur aliqua enormia in predictibus fontibus facere, ponatur in tumberello." Note also that at Ross, county Wexford, the authorities in 1389 were supposed to have a "tombrellum." *Chartae, Privilegia et Immunitates . . .* 18 Henry II—18 Richard II, Irish Records Commission, 1819-20 (reference from Mary Bateson, *Borough Customs*, I, xxxv). For general remarks on the tumbrel, see "C. Culverhouse, Baker," *Arrangement of the Bread Laws . . . with Curious Specimens of the Ancient Bread Laws* (Bath, 1813), pp. 20 ff.; John Bickerdyke, *Curiosities of Ale and Beer* (London [1886]), pp. 96 ff.; *Trans. Bristol and Gloucs. Arch. Soc.*, XII (1887-88), 115-122; Ernest

These are fairly representative selections from the mass of materials available; but none of them shows the tumbrel in action; nowhere have I seen a record of the sort quoted for the cucking-stool, an actual instance of a given individual's having undergone the punishment of the tumbrel, with one single exception, and that one quite early. A widow who brewed contrary to the assize was made to ascend the tumbrel "with distaff and spindle."<sup>91</sup> As the centuries pass, I find nothing more specific than the case of Mathe Simonds at Devizes in 1589, quoted above on page 35, and even that case stands alone. There is the presentment by the jury at Lyme Regis in 1581 "that the tumbrell be repaired and maintained from time to time according to the statute," in 1583 that Mr. Mayor was to be fined ten shillings unless he provided a tumbrel before All Saints' Day. In 1652 an everyday manual equates tumbrel and cucking-stool, as had been done before. These equivalents in unknowns do not carry us far on our way to understanding.<sup>92</sup>

Henderson, *Verbrechen und Strafen in England während der Zeit von Wilhelm I. bis Edward I.* (Berlin, 1890) [diss.], p. 69; Charles Gross, *Select Cases concerning the Law Merchant* (London, 1908), I, xxiv (Selden Society, XXIII); F. J. C. Hearnshaw, *Leet Jurisdiction . . .* (Southampton, 1908), p. 118; Pollock and Maitland, *History of English Law* (2d ed., Cambridge, 1898), ill., I, 581 f.; *Records of Northampton*, ed. Christopher A. Markham, I (1898), 314 ff.; James Tait, *The Medieval English Borough* (Manchester, 1936), pp. 207 f. The paper by Thomas S. Bush, "Notes on the Tumbrel, Cucking and Ducking Stools," *Proc. Bath Field Club and Nat. Hist. Soc.*, IX (1901), 280-291, is of little value since it merely reprints a few records which convey little information and were already available in the papers listed in my bibliographical note on the cucking-stool. Brushfield, p. 212, lists a number of MSS in which the assize is repeated many times over. His reference to John Collinson's *History of Somersetshire* (Bath, 1791), III, 460, as authority for a scold's punishment by the tumbrel at the manor of Whitstone in the time of Henry III, Brushfield evidently did not check; it would seem that Collinson glanced too hastily at his source, reading into it what he expected to see rather than what was actually there—as many another concerned in these punishments has done. In *Adami de Domerham historia de rebus gestis Gloucestriensis*, ed. Thomas Hearne (Oxford, 1727), II, 506 f., the question is of the jurisdiction of the manor as symbolized by the maintenance of the tumbrel. A woman is concerned not because she is a scold but because she claims jurisdiction.

<sup>91</sup> *The Court Baron*, ed. F. W. Maitland and William P. Bailldon (London, 1891), p. 100 (Selden Society); "Tastatores servic' presentant quod Agneta vidua brasiat et vendit contra assisam. Ideo perceptum est quod scandat tumberellum cum colo et fuso" (thirteenth century).

<sup>92</sup> Lyme Regis: Brushfield, p. 221, referring to George Roberts's *Social History of the People of the Southern Counties* (London, 1856), p. 153.

Etymologically, the word is in some respects similar to *trebuchet*, for it is ultimately French *tombereau*, a two-wheeled dump-cart, and a dialectal meaning in France is "trébuchet à prendre les oiseaux"; moreover, in France the word seems never to have been used for an instrument of punishment, although criminals condemned to death used to be carried to the place of execution in a *tombereau*, as was Sidney Carton in a *tumbril*; and the cart has been an ignominious vehicle even from the legendary day of Lancelot. The French verb *tomber* leaps to the eye, and the word is indeed based on it, not exclusively in its modern sense 'to fall' but in the older sense of 'to balance,' say, 'to teeter.' The two-wheeled dump-carts used by farmers today in France dump automatically, if loaded, when the horse is unhitched—providing, of course, that the load has been placed behind the axle—and we see that the principle of a heavy weight off-center which is the basic idea of the French military engine is precisely the same as that behind the *tombereau*, the difference being in emphasis—in the *trebuchet* the weight is used to project a missile, whereas in the *tombereau* the weight is the load of the cart and slides off through force of gravity when the shafts describe the trajectory of the *trebuchet's* missile.<sup>93</sup>

William Shepherd or Sheppard, *The Whole Office of the County Justice of the Peace* (2d ed., London, 1652), Part I, p. 166, cap. 26, Of Weights and Measures "Bakers and Brewers, if they offend, may be amerced, if grievously or frequently, the Baker may be judged to the Pillory, the Brewer to the Tumbrell, i.e Cucking-stool."

The popular work of John Kitchin, *Jurisdictions, or the Lawful Authority of County Leet* (London, 1579, 5th ed., 1675), p. 24, No. 45, repeats the ancient prescription that pillory and tumbrel appertain to frankpledge, "and for lack of them, the Town shall forfeit five pound and that is encurable." One is hard put to it to know what is meant by the presentment at Edgeware in 1552 that both tumbrel and *cucking-stool* were missing, does that indicate that neither had been known there? (Daniel Lyons, *Environs of London*, London, 1795, II, 244), and at Banbury, Oxfordshire, in 1593, stocks, pillory, "cucking-stool and tumbrell" seem to have been made (Alfred Beesley, *History of Banbury*, London, 1841, p. 224; both mentioned by Brushfield, p. 224). These are puzzling, pointing as they do to the coexistence of *cucking-stool* and *tumbrel* in one place at one time. Meager information will not justify any guess that occurs to me, whether that the *cucking-stool* and *tumbrel* were the same thing or different things.

<sup>93</sup> Littré and Hatzfeld-Darmesteter-Thomas, s.v., *Oxford Dictionary* s.v. *tumbrel*. Ducange knows of the English punishment and follows the English antiquarians.

Again as in the case of the English use of *trebuchet*, I have the impression that the word "tumbrel" was in use to designate an instrument of punishment for but a brief time in the early period, was taken up in the law-books and had its existence mostly in them rather than in actual practice among the people of England, although it was more widely used than was *trebuchet*. In sketches of ducking-stools of the eighteenth century, we occasionally see one of a two-wheeled cart with a beam projecting backward at right angles to the axle. At the far end of the beam is affixed a chair. If the wheels were backed into the water, the occupant of the chair was ducked when the tongue or shaft was released, the victim's own weight forcing her down into the water in imminent danger of drowning. I am inclined to guess that the scolding cart occasionally referred to is this same instrument, used for other offenses as well as for scolding. At Edinburgh in 1602 a man and woman were sentenced "to be kairtit throw the Toune, and ane paper vpone thair heid, contening thair cryme"—adultery; and in 1562-63 Henry Machyn saw

ij women ryd a-bowtt London in a care; on for a common skold, with a dystaffe in her hand; the thodur with a whyt rod in here hand, with bluw hodes on ther hedes.<sup>94</sup>

in regarding the tumbrel as a punishment for scolding women. His examples from the Continent are all dump-carts; the punishment he knows only from reading Cowell and Skene; s.v. *tumbrellum* he quotes, "Brasiatrix super Tumbrellum, quod dicitur castigatorium."

<sup>94</sup> Robert Pitcairn, *Criminal Trials in Scotland*, II (1833), 401; *Diary of Henry Machyn*, ed. John J. Nichols (London, 1848), p. 299 (Camden Society). Brushfield reproduces opposite page 233 a sketch of the ducking-stool at Wootton Bassett, Wiltshire, about 1760, which corresponds closely to the description here given. The scolding cart appears twice at Leicester. In 1629, Francis Pallmer made two wheels and a bar for it (William Kelly, in *Reports of the Leicester Literary and Philosophical Soc. for 1855*, p. 49); and at a date not named, perhaps 1631, Robert Cauldwell mended it (Helen Stucke and W. H. Stevenson, *Records of Leicester*, IV (1923), 261). One was bought at Nottingham in 1643 (*Records of the Borough of Nottingham*, V (1900), 207.). A scoldyngstoole was made by sawing a piece of timber into three pieces, with wheels to convey it, at Southampton in 1674 (Thomas Wright in *Trans. Brit. Arch. Assn. at its Second Annual Congress, held at Winchester in 1845*, London, 1846, pp. 34 f., and John S. Davies, *History of Southampton, Southampton and London*, 1883, p. 323). Perhaps the Skoldyng stole brought up from "Wm Pults Kaye to the guyldehalle pale" at Plymouth in 1519/20 was on wheels, too, although if so they are not mentioned

In *The Taming of the Shrew* we recall that Gremio would rather cart than court "Katherine the curst . . . that irksome brawling scold," and Katherine's successor in Fletcher's *The Woman's Prize* is similarly threatened; this last play has a famous passage on going down to the sea in cuck-stools.<sup>95</sup> Among the preliminary verses of Thomas Tuke's *Treatise against Painting . . . against . . . Adultery and Witchcraft* (1616) appear the following lame lines attributed to Arthur Downton:

A lome wall and painted face are one;  
 For th' beauty of them both is quickly gone.  
 When the lome is fallen of, then lathes appeare.  
 So wrinkles in that face fro th'eye to th'earie.  
 The chasteſt of your ſex contemne these arts.  
 And many that vſe them, haue rid in caits.

Thus edified, we shall now proceed from tumbrels and carts to another word which demands our attention.

Women that ben comoun chideres and stryverys in the forſeid toun of Gippeswich, and wil not chastysyn her wykked tungen, but maliciously withſeyn her neigbourys, be they chastyſed by the [juyſe], that is clepyd the thewe, or ellis make they grevous raunſoun gif that they have wher of.<sup>96</sup>

(*Plymouth Municipal Record*, 1893, p. 103), that at Gillingham—see above, page 5—we know only as "le Scolding Stole"

<sup>95</sup> *The Woman's Prize*, II, vi, 1; III, ii, 24, II, 1, at end, cf. also *Eastward Hoe*, by Chapman, Jonson and Marston, ed. Julia H. Hallis (New Haven, 1926) (Yale Studies in English, LXXIII), V, 1, 330, and p. 168, where references to scolds in other plays are given. "A bawd in the cait's nose and a pander in the tail" are recommended as fit subjects for ballad-mongers, in Middleton's courtly masque *The World Turn'd at Tennis* (1620)—*Works*, ed. Bullen, VII, 154

<sup>96</sup> The Domesday of Ipswich, Suffolk, in MS. B.M. Add. 25012, temp. Henry VI, translated from MS. B.M. Add. 25012, early part of fourteenth century. "femmes qe sunt comunes teneſſees entre lour veſins, e qe ne veſent lour mavoyses launges chaster de merdire a les gentz, ſeyent eſes chasteſſe par la juyſe [the Enghish translator misread this as *myſe*, a meaningless word] qe est apele le theu, ou qe eſes facent grevousſe redenſiouſ ſi eſes eyent dunt."—*The Black Book of the Admiralty*, Appendix, Part II, ed. Sir Travers Twiss, II (London, 1873), 164 f. (*Rerum Britannicarum mediæ aevi scriptores*). Brushfield, p. 222, quotes a poorer text from John Wodderſpoon's *Memorials of . . . Ipswich* (Ipswich, 1850), p. 294.

With trebuchet and tumbrel we have had better luck than with cucking-stool. What of thew? Once again we shall take a look at the texts. Only twenty miles southwest of Ipswich, at Colchester, in 1334, "Alicc la Selkwinman" and Mabel her daughter were convicted of being common litigious persons and were compelled to undergo the punishment "del Theuh"; but friends secured commutation to a fine of two shillings.<sup>97</sup> King Edward III's second charter to the borough of Hedon, eight miles east of Hull, in 1348, granted the privilege of having "pillorium, tumbrellum et thewe," giving us again a puzzle. A claim was made mentioning the thew in the twenty-fourth year of the reign of Edward III, near Chester, and like instances occurred in 1365-66 at Durham and at South Shields, twenty miles south of Durham.<sup>98</sup> More specific than these, but not enough so for the present purpose, is the use of the thew as a punishment for scolding women or prostitutes at London in the fourteenth and fifteenth centuries.<sup>99</sup>

<sup>97</sup> W. G. Benham and I. H. Jeayes, *Court Rolls of Colchester*, I (Colchester, 1921), 123.

<sup>98</sup> J. R. Boyle, *Early History of . . . Hedon* (Hull, 1895), p. xxiv, from Andrews (1931), p. 228.

At Chester Brushfield, p. 214, from MS. B.M. Harl. 2115, again in 1544, same MS.

At Durham *Durham Halmote Rolls 1296-1384*, ed. John Booth (Surtees Society, LXXXII, 1886), pp. 44, 49, 53, reference from Miss Greta Hjort.

At South Shields: George B. Hodgson, *The Borough of South Shields* (Newcastle-on-Tyne, 1903), p. 55.

<sup>99</sup> Henry T. Riley, *Memorials of London* . . . (London, 1868), p. 385. in 1375 scolds were sentenced to "the punishment of the pillory, called the thew, for women ordained, there to stand for one hour." In the *Liber Albus of the City of London*, trans. Riley (1861), p. 395. a woman who received common courtesans was to be set on the thew, p. 396. a man or woman accused of being a brawler or scold was to be set on the thew, with a *distaff with twine in hand*—probably a badge symbolic of humiliation to call attention to a breach of domestic peace (cf. Jacob Grimm, *Deutsche Rechtsalterthümer*, 4th ed., 1890, II, 305 ff.) or was it a precursor of the rolling-pin (in the play of *John, Tyb, and Sir John*, attributed to John Heywood, Tyb, who combines scolding with adultery none too dexterously, threatens to make the blood run about her husband's ears if the priest will reach her distaff to her<sup>2</sup>) On page 520, Riley gives instances of the thew used to punish those who falsified measures by putting pitch into them, or those who sold rotten fish. See also *Munimenta Gildhallae Londonensis*, ed. Riley (London, 1859-62) (Rerum Britannicarum medi aevi scriptores), I, 458; a prostitute "soit overtirement ainesnez, ove mynstrafe, de la prison tantes al thewe, et mys sui icelle;" and scolds were treated similarly; III, 423 a female baker for deception was to be placed on the thew to remain for one hour.

In 1499, George Grey, "Comes Cantii," claimed in the manors of Ayton and Rushton the right to punish those breaking the assize of bread and ale, bakers for the fourth offense by the pillory, ale-wives by the tumbrel, and female scolds by the thew—"that is, to place them on a seat called a *cucking stool*."<sup>100</sup> Tumbrel, thew, *cucking-stool*—all are synonymous to this unnamed writer, but unfortunately for us, he moves from unknown to unknown, and we are left about where we were before. Rather worse off than before we are left by the plain statement of 1533, in Yorkshire, some twenty-five miles west of Hull, when a jury presented at the court of the Abbot of Selby:

It is covenanted to John [i.e., Joan] Chatterell, servauntt, that she shalnot chyde ne flyte w<sup>t</sup> eny neghtebureg frome ensfurh, oppen [pain of] ridyng of the jebit, or thew, aboute the towne.<sup>101</sup>

This goes further to demonstrate how tenuous tradition had become with respect to these terms, and possibly how that tenuousness affects the conscientious lexicographer, for apparently on the strength of this passage alone, the editors of the *Oxford Dictionary* s.v. *gibbet* sb. <sup>1</sup> I D, believe the thew to be a pole used for the skimmington.

*Tumbrel* and *trebuchet* were borrowed from the French, but in *thew* we have a word of Germanic origin. The *Oxford Dictionary*, ignoring the possibility of a relationship with O.E. *þeow*, 'slave, servant,' made worthy of mention by the fact that only those of low birth were expected to appear for judgment at manorial courts and the like, is uncertain as to the etymology of the word used for the instrument of punishment, conjecturing only that it may be related to an obsolete verb spelt in the same way meaning 'to chastise'; this speculation does

<sup>100</sup> Thomas Blount's *Law-Dictionary* (3d ed., 1717), s.v. *thew*: "Plac. in Itin. apud Cestriam, 14 Henry VII: Georgius Grey Comes Cantii clamat in Maner. de Bushton et Ayton, punire delinquentes contra assisam panis & cervisiae per tres vices per americiamenta, et quarta vice pistores per pilloriam, braciatores per tumbrellum, et rixatrices per thewe, hoc est ponere eas super scabellum vocatum a *cucking stool*." Ayton and Rushton are in Cheshire.

<sup>101</sup> *Oxford Dictionary*, s.v. *thew*, from *A Volume of English Miscellanies* (Durham, 1890), p. 34 (Surtees Society, LXV).

seem plausible from the gloss *collistrigium*, 'stretch-neck,' the only good argument against it being that the relationship of thing and meaning might have worked the other way. If the *thew* was an object used to punish people, then a verb meaning 'to punish' could have developed from it. Both words and things may have more than one origin, however, and in this instance we have evidence that terms descending from Anglo-Saxon times could be seriously misunderstood after 1100.<sup>102</sup> The existence, abundantly demonstrated, in Old English of a noun *þeaw* meaning "a custom, usage, general practice of a community, . . . a way of thinking, legal usage," will seem to the legal historian highly significant in this connection.<sup>103</sup>

The great editor of the Anglo-Saxon laws, Felix Liebermann, renders *þeaw* in its various legal connotations as centering about the idea of custom, of tradition, of that nexus of actions and ways of thought failure to adhere to which makes one unnatural, uncouth, in the eyes of the folk;<sup>104</sup> and this unnaturalness extends to perversity with respect to the laws, those precepts laid down by the folk in days gone by. *Be þeawe*, for instance, means 'according to customary law.' Here we are pretty close to the usage of times when ethics and law were one and the same thing, when breaking the custom of the land, the *þeaw*, was a kind of immorality. We must not risk losing ourselves in the impenetrable mists overhanging the origins of Germanic law, and in the absence of any proof that this word was ever used in Old English to designate an instrument of punishment I do not propose to run in a circle by calling upon the *cathedra stercoris* of the Cheshire section of *Domesday Book*, although it does take us back to 1066; but by an examina-

<sup>102</sup> Felix Liebermann, in *Die Gesetze der Angelsachsen*, II, s.v. *Healsfang*, says, "Die Verderbnisse haltsanc, hamsocn und die Verwechslung mit Rechtsbruchbusse . . . zeigen, dass die Rechtsbuchschreiber nach 1100 Ursprung und Bedeutung des Wortes nicht mehr kannten." The change of connotation of *halsfang* from its original, 'neck-seizer,'—cf. *collistrigium*, i.e., pillory—to 'fine paid to avoid being put in the healsfang' is illuminating.

<sup>103</sup> Bosworth-Toller, s.v. It is entered in the *Oxford Dictionary* as *thew sb.*<sup>1</sup>, but it is not brought into relationship with *thew sb.*<sup>2</sup>, the instrument of punishment, although *thewpenny*—surely 'customary penny'—is referred to.<sup>3</sup>

<sup>104</sup> Liebermann, *Die Gesetze der Angelsachsen*, II, s.v., with the loci there given.

tion of another word used frequently as a synonym for *cucking-stool*, we may be able to understand *þew* a little better.

This word, which appears in Law French in England, is a loan from French. Regraters of cloth at Winchester about 1275 had punishment meted out to them as if they were falsifiers or holders of contraband, and bakers who deviated more than three ounces from the assize bore punishment likewise. The words which I render as 'punishment' here are *iuwise* and *juwise*, respectively. Between 1282 and 1290, Denbigh was granted a charter in which fines, the *juyse*, and everything pertaining to *juyse* were reserved; and in 1290-91 at Ipswich a "femme coverte de baroun" is to respond under pain of *juyse* just as if she were unmarried.<sup>105</sup>

These examples of the word *juise*, *juyse*, all earlier than the examples from English texts given by the *Oxford Dictionary*, although far from clear, will serve to illustrate the use of an abstract perhaps parallel to that of our English abstract, *þew*, *thew*. *Juise* is an Old French descendant of Latin *judicium*, one meaning of which even in classical Latin is 'punishment.' It turns up in this sense at Hereford in 1486 in a passage which brings us again to scolds and similar sowers of strife. It was agreed

<sup>105</sup> J. S. Furley, *Ancient Usages of Winchester* (Oxford, 1927), p. 30: "E ke nul regrater neit en la seude auantdite li wiche ne fermine par unt li pusse les regraz conseiller. E si iceus douz iurez trauent chose muillée u autre fausine la liuerent tant tost a bailliiffs a fere le iuwise cume de chose fause." P. 34: "E quant li pain de ferthing est en defaute de rien utre trois soz le pestur porte le juwise de la vile." The text of these passages is printed also in the same author's *City Government of Winchester* (Oxford, 1923), pp. 169, 171.

At Denbigh: "E qils eyent les attachementz de lour burgeis dedenz la ville ensemblement od la garde de la prison dedenz la ville, sauve a nous et a noz heirs les pledz, les amerclementz, les rauncouns, et le Juyse et totes les choses qa Juyse apendent."—*British Borough Charters 1216-1307*, ed. Ballard and Tait (1923), p. 210. *Juyse* is translated 'judgment,' with the note, "I.e., the pillory and the duckingstool."

At Ipswich: "Item usé est qe femme coverte de baroun seyt justicee par les bailliiffs de la dyte vyle a respoundre devant eux en play de trespass, ou peyne d'enprisonement ou de juyse peor estre agardé solom ley e usage de meymie la vyle auxi com ele sereynt justisee si ele fust sole saunz baroun."—*British Borough Customs*, ed. Bateson, I (Selden Society, XVIII), 223. Here *juyse* is translated "cucking-stool."

with respect to female scolds that inasmuch as many evils arose in the city through such-like persons, viz., striving, striking of blows, slandering, disturbing quiet by night, very frequently setting neighbors one against another, gainsaying bailiffs and officers and others and cursing them to their faces, and often breaking the peace of our lord the king by raising hue and cry and disturbing the quiet of the city, therefore whenever they shall be taken and convicted, let them have their *judicium*—judgment or punishment—without making any settlement. And there they shall stand bare-footed, with their hair streaming down from their heads, for a given time at the pleasure of our lord the king's bailiff, so that they may be seen by all those passing along the street. And after this *judicium*, this judgment or punishment, is over, they are to be taken to jail, there to remain until they have made a settlement satisfactory to the bailiff. If they do not wish to be punished by such punishment—*per tale judicium*—they are to be put out of the city, on account of the various evils and dangers which may frequently arise from such people.<sup>108</sup>

From its repeated use by Chaucer and Gower, in *Piers Plowman* and in the *Liber Albus* of London, it is evident that *juise* was in current use during the half-century before 1419; of these instances, none of which is given in the *Oxford Dictionary*, the

<sup>108</sup> *Borough Customs*, ed. Mary Bateson, I, 79 f.: "Item concordatum fuit de objurgatricibus quod per eas multa mala in ciuitate per tales oriuntur, videlicet litigando, verberando, diffamando, de docie requiem perturbando et scismata inter vicinos sepius movendu et ballivos et ministros et alios contradicendo et in persona eorum eos maleficendo et multociens per eorum huttegia et clamores pacem domini regis frangendo et tranquillitatem civitatis sue perturbando, quare ad omnes vices cum capti et convicti fuerint, habeant judicium suum [here the editor inserts from the MS. of the Montgomery charter "de le Goggynstoole"] sine redempcione aliqua facienda. Et ibi stabunt nudis pedibus et capitis crinibus pendentibus per tantum tempus ut videri possent ab omnibus transeuntibus per viam secundum voluntatem ballivi domini regis, et non alterius ballivi feodi cuiuscumque. Et post judicium factum ducantur ad gaolam domini regis et morentur ibidem quousque redemcionem fecerint ad voluntatem ballivi cuiuscumque tenentes fuerint. Et si per tale judicium castigari noluerint [this can be rendered also, "it they will not be improved"], a ciuitate ejiciantur et hoc per ballivum domini regis cum posse ciuitatis si necesse fuerit, propter diversa mala et pericula per multociens oriri possent per tales et eorum manutentores, quod tales si sint, fieri de eis sicut de perjuris et pacem et tranquillitatem ciuitatis perturbantibus." Having introduced the words from the Montgomery custumal, Miss Bateson renders *judicium suum* by "the judgment of the *cucking-stool*"; and the later *post judicium factum* and *per tale judicium* she renders by "judgment."

only ones which could be forced to yield any but the abstract meaning 'judgment, punishment' are those in the *Liber Albus* itself, and even here the basic abstract meaning seems preferable.<sup>107</sup>

If by Middle English and later times the form *thew* had lost the abstract meaning of O.E. *þeaw* and had come to denote a concrete instrument of punishment, the evidence for the loss should be plainer than it is, in spite of the fact that these documents are merely records, not expository treatises. Taken alone, the expression "thirty days" by which a twentieth-century municipal judge closes a case would naturally lead the uninitiated to ask, "Thirty days' what?" It is significant enough to justify insisting that the writers of our ancient records must themselves often have been relatively uninitiated in the meanings of the terms used mechanically generation after generation.<sup>108</sup>

<sup>107</sup> Chaucer, Knight's Tale, 882 (A 1739) Palamon says, "Wherfore I axe deeth and my juwise," and in the Man of Law's Tale 696 f. (B 794 f.), the counterfeited letter begins, "The king commandeth his constable anon/Up peyne of hangyng, and on heigh juyse" Gower uses the word in the *Mirour de l'omme* in ll. 1545, 2508, 15429, in *Confessio amantis*, Prologue 1042 and Book III, 322, 2008. In *Piers Plowman* it appears at C Pass. xxi, 427. *Liber Albus* (1429 or before) has it at pp. 336, 458, 459, 465, 665, cf. pp. 600 ff. for indication that *judicium* is used widely in the letter-books in the sense 'punishment.' Chaucer and Gower use *thew* meaning 'manners, customs,' not meaning an instrument of punishment. In the *Complete Works of Chaucer*, ed. F. N. Robinson (Cambridge, Mass., 1933), *juwise* is glossed 'justice, judgment; sentence'; in *A Book of London English*, ed. R. W. Chambers and Marjorie Daunt (Oxford, 1931), *rewesse*, etc., is glossed 'judgement, sentence.'

At Salford about 1230 another term is used with comparable vagueness. The Assize of Bread stipulated that for the first three offenses, the baker should be fined, "et ad quartam vicem faciet assisam ville."—*British Borough Charters* (1923), p. 221. Nobody is likely to believe that *assisam* is anything but abstract here.

<sup>108</sup> The strongest evidence that a concrete meaning developed is that the *Promptorium Parvolorum*, ca. 1440, glosses *thew* as "pylory, collistrigium," no doubt on the basis of ambiguous statements—which no doubt reflect ambiguous usage—like those in the *Liber Albus*, which if taken together with the general usage of the period would seem to remain abstract. *The Catholicon Anglicanum*, 1483, ed. S. J. H. Heritage (Cairns Society, NS XXX, 1882), glosses "a thewe; tripotheum (Collistrigium, et cetera . . .)," which I take to mean that it is a three-legged stool, a pillory and other things like that. This is decidedly vague and seems to point to a survival of the vagueness of the abstract. Also vague is the reference in *Piers the Plowman*:

. . . to punisshen on pillories . or on pynnyng stoles  
Brewesters, bakers . bochers and cookes;

(A. Pass. III, ll. 69 f. B. Pass. III, ll. 78 f.—variant *pynnyng stoles*. C. Pass. IV, ll. 79 f.—variant *pynnyng-stoles*), ed. Skeat (1886), I, 68 f. We have no way of

If it continued to mean only "the [customary] punishment," we can perhaps see a reason for the adoption from the French of tumbrel and trebuchet—to avoid the vagueness of *þeaw* at a time when law-terms derived from several unfamiliar tongues, Old English, Old French, and Latin, produced confusion enough. One's natural desire to penetrate to "Domesday and beyond" leads one to speculate whether punishment *be þeaw*, that is, according to custom or law, in Old English times was carried out by engines of correction of ignominious nature, but evidence is wholly lacking. Our trail seems to disappear both in England and in France, and the origins of thew and cuck-  
ing-stool, of trebuchet and tumbrel, continue to elude us.

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ascertaining what is meant by *pynnyng stoles*. Skeat says 'stools of punishment, also called *cuckling-stools*.' Again we have a vague term leaning toward the abstract. The absence of *cuckling-stool* from the vocabulary of Gower, Chaucer, and *Piers Plowman* would seem to indicate that the word had not come into general usage by the end of the fourteenth century but the absence of it in Shakespeare does not mean that it had not come into the usage of the end of the sixteenth century. *The Catholicon Anglicanum, 1483* (Camden Soc., NS XXX, 1882) gives: "To pine; punire; Altherc, &cetera, ubi to punysche"

## SCOTLAND

FOR DECEMBER 20, 1581, the Proceedings of the Kirk Session of St. Andrews record that

The sessioun ordanis and decernis Jhone Scheves and Margret Clepen adultraris to begyn thair repentance in sek claith upon Sonday cum aucht dayis, to stand<sup>2</sup> at the kirk dur fra secund bell to sermone beir-futtit quhill the thrid bell be cessit, and thaireftir to sitt on the adultraris place of the penitent stuill, quhill the sermone be endit, and sa furth ilk Sonday to continew quhill the kirk be satisfit; and ordanis the officiar to warne thame heирto, and if thai failye that publict admonitioun be maid to thame in the kirk Sonday cum aucht dayis, conforme to the ordour.

And for December 8, 1594,

James Keingzo officiar, being mariit with Jonet Hendersoun his laidfull spous, hes committit the filthie vice of adulterie with Elspott Eviott spous to Thomas Wilsoun. And thairfor the said James, be decree of the sessioun, was jokit, cartit and that throw the haill streitis of the town, and cariit to the North Hauche of this citee, the heill scalaris and utheris, ane great multitude of pepill, upon Monday ane merkat day, being his convoy, casting rottin eggis filthe and glar at him, wes at last dowkit ower the head diveris tymes. . . . He is also decernit to be banisit the boundis of this citee. . . . The sessioun hes also ordanit the said James to stand at the kirk dur, beir heddit and beir futtit, ilk precheing day tyme of sermon, fra the secund bell quhill the last bell to sermon, in seclaith; and thaireftir to enter on the hichest degré of the penitent stuill, and sitt quhill the sermone and blessing be gevin, and to come ilk tyme to the catchisme, and sa to continew quhill the kirk be satisfit.<sup>1</sup>

<sup>1</sup> *Quhill* means 'until.' These passages are quoted from the *Register of . . . St. Andrews, Comprising the Proceedings of the Kirk Session 1559-1600*, ed. David Hoy Fleming (2 vols., Edinburgh, 1889-90), paged continuously, pp. 463, 793 (Scottish Historical Society, IV, VII). James Keingzo's banishment must have been symbolical rather than actual. *Jokit* means 'yoked,' from L. *jugum*, thinks Fleming. Cf. Jacob Grimm, *Deutsche Rechtsaltertümer* (4th ed., 1899), II, 315, 318.

The Kirk Session of Aberdeen directed in 1562 that provosts, baillies, magistrates, and others should not be dishonored; and gif the disobedient persone beis indigent and puyr, [he] sall for the first faill be put in the cukstul . . . quhasumever . . . jniuris and mispersonis than nyghtbour with infamous and hatefull wordis . . . sall ask forgivnes befor the congregatioun of God and the party, and say *Toung ye leid* for the first falt, for the secund salbe put in the cukstule, and for the third falt be banist the toun. [In the case of fornication] for the third fault . . . thair fud to be breid and vattir allanerlie, and, in the end, to be tene to the deepest and fullest pule or wattir of toun or parochin, thair to be thryse douckit, and thairafter baneist the said toun or parrochin for ever.<sup>2</sup>

Lighter offenses were similarly reproved. The Kirk Session of St. Andrews decided in 1599 that persons caught playing golf during the time of divine service should for the third offense "be placed on the repentance pillar"; and in 1647 the Presbytery of Cupar tried a man for shooting on Sunday, the sentence being

David Blyth . . . is appoyned to stand at the kirke doore of Ebdie, Sonday next, barefooted and bareheadit, with the gun in his hand wherewith the blood was shedde, untill the last bell, and thairafter to sitt before the pulpitt the tyme of sermon, and after sermon to acknowledge and confesse upon his knees his sin, and then be received.<sup>3</sup>

Quotations of this kind can be multiplied by many hundreds. The "penitent stuill," stool of repentance, or, as it was sometimes called, the cock stool, the cutty stool, was so widespread as to have been an universal institution of the Kirk for some

<sup>2</sup> Selections from the *Records of the Kirk Session, Presbytery, and Synod of Aberdeen* (Aberdeen, 1846), pp. 7, 12 (Spalding Club). On December 5, 1602, a woman who had been banished for harlotry returned and "hes fallin of new agane." Sentence: "to be doukit at the cran [crane]" and re-banished—p. 24; cf. pp. 46, 57. For the "*Toung ye leid*" formula see Jacob Grimm, *Deutsche Rechtsaltertumer* (4th ed., 1899), II, 301, and *Borough Customs* (1904), ed. Mary Bateson, I, 78. Calling attention thus to an offending part of the body was apparently a substitute for cutting it off.

<sup>3</sup> Charles Rogers, *Scotland Social and Domestic* (London, 1869), pp. 340, 343 (Grampian Club). Cf. pp. 28, 312, 320, 327, and the same writer's *Social Life in Scotland* (Edinburgh, 1884-86), II, 35, 198, 244.

two centuries after its establishment. Although it has not been the subject of extended inquiry, it is clearly enough described.<sup>4</sup> The essential part of the punishment was public penance in the kirk. Ducking seems to have been entirely distinct, in fact was an additional penalty. The series carried out at Edinburgh in 1570 is typical of this. Two men were imprisoned for eight days on bread and water,

then they were placit at the mercat place, with the inscription of thair fault writtin on thair foreheid; efter that thay war placit in the kirk, to repent befoir the people thrie severall sondayis; fourthlie, thay were dowkit in a deap loch over the heid thrie severall tymes.  
...<sup>5</sup>

When the cock-stool appears in Scotland, it seems to mean simply "pillory"; there is no reason to think that it was associated with a chair for ducking or for exhibition only, as was apparently the case in England. Of this there can be little doubt when we find a man sentenced to be set on the cuck-stool, and "there to have his neck and hands put in the same, and his lug nailed thereto for the space of one hour."<sup>6</sup> As for the stool of repentance itself, it seems to have been not what one would call a stool in any modern sense, but in some cases a pillar on which the sinner stood, before the preacher and in full view of the public, in others a bench or even series of benches, one "laiche in the kirk," with others higher, forming as it were purgatorial gradations, horrid though this idea would have been to the presbyters. Quite a wide variety of sins were thus purified. Of a few more than one hundred cases

<sup>4</sup> David Hume, *Commentaries on the Law of Scotland* (3d ed., Edinburgh, 1829), I, 468 ff.; II, 489 ff.; Andrew Edgar, *Old Church Life in Scotland, Lectures on Kirk-session and Presbytery Records* (first series, Paisley and London, 1885), pp. 182-367, esp. pp. 287-301; William Cramond, a two-column article in *The Scotsman* (Edinburgh) for Aug. 28, 1903, p. 6. The discussion by William Andrews in *Bygone Punishments* (1931), pp. 210-225, is slight; Cuming Walters has a longer article in *Antiquities and Curiosities of the Church*, ed. William Andrews (London, 1897), pp. 94-110, and Andrews's *Old Church Life* (London, 1900), pp. 51-54, has an allusion or two, as do various of the volumes in his "Bygone [county]" series.

<sup>5</sup> *The Historie and Life of King James the Sext . . .* (Bannatyne ed., Edinburgh, 1825), p. 64.

<sup>6</sup> David Hume, as above, II, 489; *A Dictionary of the Older Scottish Tongue*, ed. Sir William A. Craigie, Pt. V (1935), s.v. *cockstool*.

which came before the Kirk Session of St. Andrews, between 1559 and 1600, approximately two fifths were for fornication, one fifth were for adultery, and the rest were scattered at the rate of a few cases each among failure to present a child (presumably illegitimate) for baptism, bad behavior, slander, breaking the Sabbath, assault, blasphemy, drunkenness, disobedience, "keeping of taverne upon the Sabbath day," and so on.<sup>7</sup>

Behind this lies the great authority of John Knox, for his *First Book of Discipline* (1560), Chapter IX, "The Seventh Head of Ecclesiasticall Discipline," contains this direction:

If the Crime be publick, and such as is heynous, as Fornication, Drunkenness, Fighting, common Swearing, or Execration, then ought the Offender to be called in presence of the Minister, Elders and Deacons, where his Sinne and Trespass ought to be declared and aggregated, so that his Conscience may feele how farre he hath offended God, and what Slander he hath raised in the Kirk; if Signes of unfaigned Repentance appear in him, and if he require to be admitted to publick Repentance, the Minister may appoint unto him a Day when the whole Kirk convenes together, that in Presence of all he may testify his Repentance which before he professed.<sup>8</sup>

David Calderwood justified discipline of this kind as being a bridle to stay the wicked from their mischiefs, and "an order left by God unto his church, whereby men learne to frame their wills and doings according to the law of God."<sup>9</sup>

<sup>7</sup> *Register of St. Andrews*, as above, p. cii, and *passim* for the cases. Some of the sinners sat in or on the gok-stool (p. 702), gokstool (p. 399), or gokstule (p. 420), a corruption of *crock-stool*, no doubt. It stood either in the kirk or in the marketplace, and I suspect that in some cases it was the stool of repentance, in others a pillory.

<sup>8</sup> *The Works of John Knox*, ed. David Laing (Edinburgh, 1848), II, 227 ff.; also in *A Collection of Confessions of Faith, Catechisms, Directories, Books of Discipline etc. of publick Authority in the Church of Scotland* (Edinburgh, 1719-22), II, 568 ff.

<sup>9</sup> *The History of the Kirk of Scotland from the Beginning of the Reformation unto the End of the Reign of King James V* (Rotterdam, 1578), ed. T. Thomson and David Laing (Edinburgh, 1842-49), II, 65-93; II, 4, 34 (Wodrow Society, No. 7); texts from the Bible are given in support, II, 63. See also J. Cunningham, *Church History of Scotland* (Edinburgh, 1882), esp. I, 397 ff., and William Forbes, *Institutes of the Law of Scotland* (Edinburgh, 1722-30), II, 124. The best discussion of the whole subject is Andrew Edgar's study on "The Discipline of the

At least in theory, this was not punishment. It was intended to bring back the wayward into the fold, to chasten and purify them. It is the old, age-old idea expressed by John Calvin in the remark that repentance consists in the mortifying of the flesh, as a precursor of the quickening of the spirit.<sup>10</sup>

It would be false to assume that the thousands of sinning Scotch men and women who appeared in sackcloth or linen before their fellow-worshipers and humbled themselves in public contrition while the minister discoursed lengthily and minutely on the nature of their sins did so only as a result of the increased rigors of the Reformation, for there are instances in pre-Reformation Scotland of people appearing bareheaded and barefooted in the church, at the time of high mass, wax candle in hand, to ask forgiveness of some fault.<sup>11</sup> Moreover, we should be wrong if we were to think of public penance as peculiar to Scotland. In *A Full and Plaine Declaration of Ecclesiasticall Discipline owt off the Word off God and off the Declininge off the Churche of England from the same* (1574), Walter Travers urges that it be used for all sinners; and as a matter of fact public penance was used in the Church of England steadily until well on toward the end of the nineteenth century, the frequency diminishing as the nineteenth century advanced.<sup>12</sup> The Church of England did not invent public penance, but, like the Scottish Kirk, merely took over the system of the medieval Church which after centuries of trial had been very largely abandoned upon the establishment of auric-

Church," V, 427-556, in *The Church of Scotland Past and Present . . .*, ed. Robert H. Story (5 vols., London and Glasgow, n.d. [ca. 1890]).

<sup>10</sup> *The Institution of Christian Religion*, trans. Thomas Norton (London, 1561), 3.3.5, "Of Repentance." For a clear exposition showing how Calvin's secularization of the state stopped at this point, see Pierre Imbart de la Tour, *Les Origines de la Réforme*, IV (Paris, 1935), 109.

<sup>11</sup> John Mackintosh, *History of Civilisation in Scotland* (2d ed., Paisley and London, 1892-96), II, 234. From *Statutes of the Scottish Church, 1225-1559*, trans. D. Patrick (Edinburgh, 1907) (Publications of the Scottish History Society, LIV) it would seem that public penance was not usual, however. Cf. Henry Grey Graham, *Social Life of Scotland in the Eighteenth Century* (2d ed., 1906), p. 280.

<sup>12</sup> Walter Travers's pamphlet was printed at Geneva in 1574 and 1580, at London in 1617, and is reprinted as Appendix IV in Neal's *History of the Puritans*, Vol. V.

ular confession and hence of private instead of public penance.<sup>13</sup> Apparently, penance in England had nothing to do with the cucking-stool; at any rate, the cucking-stool is not mentioned

<sup>14</sup> Strangely enough, public penance in the Church of England, a commonplace spectacle for centuries, has not yet had its historian. Richard Usher's 28-page pamphlet, *Notes on White Sheet Confessions in Churches and Market Places* (Newton Abbott, n.d. [1934], Mid-Devon Newspaper Co.), is the most ambitious effort. Hubert Hall, "Some Elizabethan Penances in the Diocese of Ely, 1581-1599," *Transactions of the Royal Historical Society*, Series III, I (1907), 263-277, has a valuable bibliographical note. Very useful on its subject is Thomas P. Oakley, *English Penitential Discipline and Anglo-Saxon Law* (New York, 1923) (Studies in History, Economics and Public Law No. 242). More or less pertinent materials will be found also in Book VI of Richard Flooker's *Laws of Ecclesiastical Polity* and in the following: *The Common Places of Peter Martyr*, trans. Anthony Marten, Part II, cap. xi, p. 483 (1574); William Harrison's *Description of England* . . . (1579), ed. Furnivall, pp. 193 and 225: "Harlots and their mates, by carting, ducking, and dooing of open penance in sheets, in churches and market steeds, are often put to rebuke"; John Cowell, *Institutiones iuris anglicani* . . . (Cantabrigiae, 1605), Book IV, tit. xviii f.; Thomas E. Towlins, *The Law-Dictionary* (4th ed., London, 1835), s.v. *penance*; William Hale Hale, *Precedents* . . . 1475-1640 . . . extracted from *Act Books of Ecclesiastical Courts in the Diocese of London* (London, 1847), *passim*, but esp. pp. 2-4, 10, 32 f., 45, 60, 64, 74, 80 f., 85, and 103, for occurrences before the Reformation, and pp. 128, 130 f., and 151 for occurrences after the Reformation; Samuel Hopkins, *The Puritans during the Reigns of Edward VI and Elizabeth* (3 vols., Boston, 1859), II, 385, with legal notes; Charles J. Abbey and John H. Overton, *The English Church in the Eighteenth Century* (2 vols., London, 1878), II, 508 f.; James F. Stephen, *History of Criminal Law in England* (3 vols., London, 1883), II, chap. xxv, pp. 396-427; Walter F. Hook, *A Church Dictionary* (14th ed., London, 1887), s.v. *penance*; the works written or edited by William Andrews mentioned above, p. 11.

To the large subject of penance in the Middle Ages, the lengthy articles, with references, under *pénitence* and *pénitentiels* in A. Vacant's current *Dictionnaire de théologie catholique* (this vol. 1932-34) give an introduction. Standard collections are F. W. H. Wasserschleben, *Die Bussordnungen der abendländischen Kirche* (Halle, 1851), and A. W. Haddan and William Stubbs, *Councils and Ecclesiastical Documents relating to Great Britain and Ireland* (3 vols., Oxford, 1869-78), with supplement. In *A Dictionary of Christian Antiquities*, ed. William Smith and Samuel Cheetham (London, 1875-80), II, 1597, we are told that public rites of penance ended in England in 700, on which see Liebermann, *Die Gesetze der Angelsachsen*, II, 618, s.v. *Ponitenz*. That they were resumed later in some measure we have seen. In France in 1780 they were current, for Muyart de Vouglans writes in *Les loix criminelles de la France* (Paris, 1780), p. 68, on *Amende honorable*, "Le condamné est conduit . . . à la porte d'une Eglise ou de l'Auditoire, où, étant en chemise, pieds & tête nuds, la corde au cou, tenant en main une torche de cire ardente du poids de deux livres, il doit déclarer à genoux, . . . que, faussement, et contre la vérité, il a fait ou dit quelque chose." On this compare Albert Du Boys, *Histoire du droit criminel des peuples modernes* (Paris, 1854), I, 440 ff., and the note above, p. 10. In Spain, the Inquisition resorted to it; see Henry Charles Lea, *A History of the Inquisition in Spain*, III (New York, 1907), 138, 148 ff., 162 ff. Informative also are Nathaniel Marshall, *The Penitential Discipline of the Primitive Church for the first four hundred Years* (2d ed., Oxford,

in any record which I have seen. The type of ceremonial is well known, if only from the humiliation of "Dame Elianor Cobham Duchesse of Gloucester":

With taper burning, shrouded in a sheete,  
Three days a row, to passe the open streeete,  
Bareleg'd, and barefoote. . . .<sup>14</sup>

To put it more definitely if less poetically,

the sinner is usually enjoined to do a public penance in the cathedral or parish church, or public market, bare-legged and bare-headed, in a white sheet, and to make an open confession of his crime in a prescribed form of words, which is augmented or moderated according to the quality of the fault and the discretion of the judge.<sup>15</sup>

1844); Paul Hinschius, *Das Kirchenrecht der Katholiken und Protestantten in Deutschland* (Berlin and Leipzig, 1869-97), IV, 698, 726, 754, 835; V, 90 ff.; Eduard Rosenthal, *Die Rechtsfolgen des Ehebruchs nach kanonischem und deutschem Recht* (Würzburg, 1880), but see Bennecke, below, p. 32; Edwin Katz, *Grundriss des kanonischen Strafrechts* (Berlin and Leipzig, 1881), pp. 52 ff., 156; Hans Bennecke, *Die strafrechtliche Lehre vom Ehebruch in ihrer historisch-dogmatischen Entwicklung* (Marburg, 1884); Joseph Freisen, *Geschichte des kanonischen Ehe-rechts bis zum Verfall der Glossenliteratur* (Tübingen, 1888), esp. pp. 586 ff., 625 ff.; Lucian Kahn, *Etude sur le délit et la peine en droit canon* (Nancy, 1898), bibliography, pp. x-xv (Université de Nancy, Thèse pour le doctorat en droit); Karl Binding, *Die Entstehung der öffentlichen Strafe im germanisch-deutschen Recht* (Leipzig, 1909), esp. pp. 10 ff., 21 ff., 31 ff., 35; Karl Ludwig von Bar, *A History of Continental Criminal Law* (Boston, 1916), pp. 81 ff., 184 (in part a translation of his *Geschichte des deutschen Strafrechts* [1882]); Oscar D. Watkins, *A History of Penance . . .* (2 vols., London, 1920), with extensive bibliography; Anton Mailly, *Deutsche Rechtsaltertümern in Sage und Brauchtum* (Wien, 1929), p. 159 (Kleine Historische Monographien, Beilage zur Kultur- und Zeitgeschichte, XIX-XX) (the reference to Grimm, DRA, should read "II 325"; other instances will be found in DRA at II, 308 ff.); Bernhard Poschmann, *Die abendländische Kirchenbusse im frühen Mittelalter* (Breslau, 1930), pp. 38-57, 116-132 (Breslauer Studien zur historischen Theologie XVI). In Germany and Holland both before and after the Reformation, carrying a stone in church or marketplace was a form of public penance. Eberhard Freiherr von Künssberg regards this as a transitional stage between primitive sacrifice and secular punishment (*Jahrbuch für historische Volkskunde*, I, 1925, 103); cf. K. F. Frederiks, *Het oud-nederlandsch Strafrecht* (Haarlem, 1918), pp. 406-409. Whether this theory can be used profitably in the present study will be discussed later.

<sup>14</sup> *Mirror for Magistrates*, ed. Haslewood, II (1815), 112 ff. This penance, which is mentioned frequently, as in the First Part of the Contention . . . (1594), was assessed to expiate the practice of witchcraft and sorcery. Jane Shore paid for her adultery in the same way; see, e.g., the *Mirror for Magistrates* again, II, 461 ff.

<sup>15</sup> Tomlins, as above.

If in the twentieth century the power of the keys is not in all cases separated sharply from the power of the sword, the intermixture of the two in earlier periods can seem but natural. Whether the clear traces of ecclesiastical penance which turn up occasionally in connection with the *cucking-stool* are significant we shall consider later; the texts concerned have been set forth in Chapter I. Of course, whenever the church met with defiance or persistent disobedience, it could turn to the secular arm and appeal for physical force, which could be relied upon to repress any disconcerting signs of a sense of humor among the fallen. At Helmesley, in the North Riding, in the chilly month of January, 1657,

Margery Watson of Whitby, being a scold, [is] to be ducked by the Constable, unless she within a month do ask Ja<sup>s</sup> Wilkinson and his wife of Sneaton forgiveness in Whitby Church publiquely and at the Cross in the market town there.<sup>16</sup>

This institution was longer-lived in England than it was in Scotland. Oliver Cromwell was subjected to it, Evelyn, Pepys, John Gay, Pope, Samuel Johnson, and Wordsworth, to name no more, were familiar with it, and Robert Burns probably experienced it himself.<sup>17</sup>

<sup>16</sup> *Quarter Sessions of the North Riding*, ed. J. G. Atkinson, V (1887), 262; cf. p. 164.

<sup>17</sup> Crampond, as above, quotes from Dr. Adair in attempting to prove that Burns had stood in the *cutting stool*, and Catherine Carswell, in *The Life of Robert Burns* (London, 1930), reprints "The Court of Equity," pp. 457-462. J. S. Farmer (*Merry Songs and Ballads*, privately printed, 1897, V, 229) attributes to Burns a lusty lyric in which the author says definitely that he appeared in church. See Franklyn B. Snyder, *The Life of Robert Burns* (New York, 1932), pp. 118 f., 125 f. By about 1780 or 1790, public penance in Scotland was replaced by the payment of fines; R. H. Stevenson, *Chronicles of Edinburgh* (Edinburgh, 1851), p. 223, says that in 1783 the fines collected at Edinburgh alone amounted to six hundred pounds. How consistently the discipline was carried out in nineteenth-century England I do not know. The *Western Morning News* (Plymouth) on August 2, 1882, reported that a man who had seduced a servant-girl appeared at All Saints' Church, East Clevedon, before the congregation, was publicly rebuked by the vicar, and then had a sermon based on Matt. 18:21 preached at him. This must have been unusual by that date, for in 1830 when a clergyman near Cambridge was indiscreet enough to prosecute before the ecclesiastical court a man who had spoken scandalously of him, the sentence of public penance in a white sheet miscarried seriously. The man blacked his face, got drunk with his friends, and made such an uproar in the church that the meeting ended in a riot, reports

*Gratia divina contritis crimina delet.* Whether the repenting one should demonstrate publicly his return to—and thereby his fall from—grace was a moot question in the Church at the time of Gratian's *Decretum aureum*, about 1140, and so the *Concordia discordantium Canonum* marshals a host of authorities pro and con, leaving the decision to the sagacious reader of the *Tractatus de penitentia*. For the moment I shall leave the question of Scottish ecclesiastical discipline in the same safe hands, and turn to Continental examples of the sort of punishment which we are studying.<sup>18</sup>

James F. Stephen, *History of Criminal Law in England* (1883), II, 430. In general, the discipline seems to have decayed toward the end of the eighteenth century. The end is well in sight when it becomes a topic for a vulgar jest-book, as it does in Sterne's *Witticisms, or Yorick's Convivial Jester* (London, for A. Milne [1782]), pp. 26 f.

Public penance passed to America along with witch-burning and kindred amenities, as readers of Hawthorne recall, but they may not know that he used actual legal records for the background; see Andrew M. Davis's articles in *Proceedings of the American Antiquarian Society*, N. S. X (1895), 97-126, and XIII (1899), 69-73, and John Noble's "Notes on the . . . Punishment of Crimes in the Court of Assistants in the Time of the Colony," *Publications of the Colonial Society of Massachusetts*, trans. III (1895-97), 51-66. The ducking-stool went along with it. Notices of it in America are in Henry Mason Brooks's *Some Strange and Curious Punishments, Cleanings chiefly from Old Newspapers of Boston and Salem* (Boston, 1886; The Olden Time Series, No. 5) and in Alice Morse Earle's *Curious Punishments of Bygone Days* (Chicago and London, 1896), pp. 106-118, as well as in Arthur P. Scott's *Criminal Law in Virginia* (Chicago, 1930), p. 180. Most interesting is the case of *United States v. Royall* (3 Cranch, C. C. 620) in May term, 1829, in the Circuit Court of the District of Columbia; see *Federal Cases of the Circuit and District Courts, 1789-1880, XXVII, Containing Cases 15820-16425* (St. Paul: West Publishing Co., 1896), pp. 907-911. A survey of the law of ducking in England is given, the decision being insofar as this is concerned that punishment by ducking had become obsolete.

<sup>18</sup> The verse appears in the *Decretum abbreviatum in versibus*, appended to the edition of Gratian printed by Jehan Petit at Paris in 1512. The section on penitence occupies folios ccclxxviii-ccccxliii in this edition. The standard edition is by E. Friedberg, *Corpus Iuris Canonici* (Leipzig, 1878-81).

## III

## THE CONTINENT

## GERMANY AND HOLLAND

In the days of the rule of King Rudolph [*anno 1286*], when Zurich was at peace, a great scoundrelly baker named Wackerbold damaged the city badly by setting fire to it. He baked contrary to the assize, and deserved the rope, but instead he was given the privilege of those who have to be punished, but not too severely. By the water stood a structure [*schnelen*] with a basket in which the criminal was placed and then hauled up as a bucket is from a well. To get out, he had to jump into the water. As a means of lessening his punishment for thievery, this Wackerbold was put into the basket. When he had flopped out of it and got wet and dirty, the people standing about had a good laugh at seeing him get his deserts. The surly wretch resented their mirth, and bided his time. Since he was a baker, he was able to cram his house full of wood. One night when the wind came right, he set fire to it and fled to the mountain nearby, whence he could enjoy the sight of the conflagration. Two women hastened by and asked him why he was running away from the city, whereas other men stayed and strove to put out the fire—did he not see how ill things were going?

“O, yes,” replied the scoundrel, “I’m enjoying it. Go back to the city and tell them that inasmuch as Wackerbold had to jump out of the basket and get wet, he needed to get dry somehow, so he built him a fire. Now that he’s nice and dry he can laugh at those who laughed at him. It’s all one to him whether they laugh or weep over their bonfire.”<sup>1</sup>

From Wernigerode, in Saxony, on August 26, 1593, a steward wrote to his master:

My Lord, stealing in fields and gardens has grown past all measure. Both warning and punishment having failed of their purpose, the

<sup>1</sup> Eduard Osenbrüggen, *Studien zur deutschen und schweizerischen Rechtsgeschichte* (Schaffhausen, 1868), pp. 361 ff. H. H. Bluntschli, *Memorabilia Tigurina, oder Merkwürdigkeiten der Stadt Zürich* (3d ed., Zürich, 1742), refers frequently to this incident at pp. 66, 130, 285, 326, 406, as does Aegidius Tschudi, *Chronicon Heleticum* (Basel, 1734-36), I, 188.

councillor and I have put our heads together and decided to have set up beside the ditch a "shame-basket" from which evil-doers can be thrown into the water, as was announced publicly today in the town and country roundabout. Next Monday the basket and its mounting will be ready. It goes without saying that it will throw a good scare into the thieves.<sup>2</sup>

Article 44 of the second municipal code of Strassburg, drawn up between 1214 and 1219, decrees that "whoever measures wine unjustly must fall from the *scupha* into filth, and the inn-keeper who owns the wine must pay one talent."<sup>3</sup>

Thieves and fraudulent bakers dumped out of baskets, fraudulent winesellers out of a *scupha*—what are these? Turning at once to the great German predecessor of the *Oxford Dictionary*, the *Deutsches Wörterbuch*, we find that the *schupfe* or *schupfstuhl* was a piece of apparatus out of which people were dumped, or perhaps a *schandkorb*, "shame-basket" in which lawbreakers were exhibited—a pillory, so to speak. "The punishment was employed for dishonest bakers [for sailors, forswearers, scolding women], who were pulled up in a basket;

<sup>2</sup> E. Jacob, *Zeitschrift des Haiz-Vereins für Geschichte und Altertumskunde*, XXXVI (1903), 143: "Der Amtschösser Ulrich Buchau berichtet seinem Herrn, dem Grafen Wolf Ernst zu Stolberg . . . , 'Wolgeboren undt Edler Graff, Euern Gnaden scindt meine underthenige schultige undt gehorsame dienste jederzeit zuvor. Gnediger Herr, E. Gn. gebe ich underthenigk zuvornchinen: Nach dehme dass Stehlen in den Gerten, Legden so wol auch im felde diesess ortss fast überhandt nimbt undt kein vorwarnen noch Straffen mehr helffen will, dass ich mit dem Rattc alhier vorglichen habe undt einen Schande Korb bey den Kessel Teich wil setzen und ufrichten lassen, dadurch die ubertretter von dem meyster inss wasser geworffen werden sollen, wie dem solichs diesen Tagk von den Cantzlen ist abgekundiget undt menniglich beydass in der Statt undt ufm Lande ist vorwarnet worden, auch morgen montagss dass Gebende mitt dem Korbe angefangen und gefertigt werden soll; ungezweyffelt, es werde unter den gerten- undt felddieben nicht eine geringe furcht undt schrecken bringen. So bin ich auch der underthenigen hoffnung, Ew. G. werden sichs auch mit zuwieder sein lassen; welches Ew. Gn. ich underthenigen vormelden sollen, vndt bin den selben zu dienen schultigk undt willigk.'"

<sup>3</sup> Philippe A. Grandidier, *Œuvres historiques inédites* (Colmar, 1865), II, 208; for the corrected date see Karl Hegel, *Chroniken der deutschen Städte* (München, 1871), IX, 928, and F. Frensdorff, in *Hansische Geschichtsblätter* for 1871, p. 34. "Quicunque etiam vina injuste mensuravit, de scupha cadet in merdam, et hospes, cuius vina sunt, dabit talentum." In the version of 1270, this appears as, "Swer ouch unrechte misset den wein, den sol man schüpfen und der wurt dez der win ist der git ein pfunt."—A. W. Strobel, *Geschichte des Elsasses*, ed. Engelhardt, I (ad ed., 1851), 331; cf. p. 316.

when it was turned over, they fell out into a pit or ditch full of water.”<sup>4</sup>

At Reval in the first quarter of the thirteenth century, the immoral husband was punished by a fine or by being thrown from the *scuppestol*. Also in the Baltic region, in 1240 at Lübeck, adulterers were to be sentenced to be thrown “up den scuppestol” and banished. At Brandenburg about 1250 that which in England was called forestalling and regrating, that is, cornering the local market or somehow taking unfair advantage of competitors, was punished in the same way; the man had to sit on the seat called the *scupstöl*. At Rostock shortly after 1268 a man was “projectus in scuppestol” and banished. The term *schüppestüel* was used allusively at Cologne in 1269, the term *schuphen* for bakers at Augsburg in 1276. Vagabonds,

<sup>4</sup> *Deutsches Wörterbuch*, s.v. *schupfstuhl*, *schupfen* 2c, *korb* II 4b. In what follows, I draw very largely upon the references given here and under *korb*, *schandkorb* and the materials in Jacob Grimm’s *Deutsche Rechtsalterthümer*, ed. Heusler and Hübner (4th ed., Leipzig, 1899), II, 323 ff. Learned and sensible are Jakob Döpler, *Schauplatz der Leibes- und Lebensstrafen* (Sondershausen, 1693), I, 748, and Johann C. H. Dreyer, *Antiquarische Anmerkungen über einige in dem mittleren Zeitalter in Deutschland und im Norden üblich gewesene Leibes- und Ehrenstrafen* (Lübeck, 1792), pp. 122-126. Particularly useful are A. Birlinger, *Schwäbisch-Augsburgisches Wörterbuch* (München, 1864), p. 404; J. L. Frich, *Deutsch-Lateinisches Wörterbuch* (Berlin, 1741), I, 538; H. A. Gengler, *Deutsche Stadtrechtsalterthümer* (Erlangen, 1882), pp. 126 ff., 216; Matthias Lexer, *Mittelhochdeutsches Wörterbuch* (Leipzig, 1872-78), II, 826; Eduard Osenbrüggen, *Studien zur deutschen und schweizerischen Rechtsgeschichte* (Schaffhausen, 1868), pp. 365 ff.; H. A. Berlepsch, *Chronik vom Bäckergewerk* (St. Gallen, n.d. [1852?]), pp. 106-111; F. Frensdorff, *Die beiden ältesten Hansischen Recesse*, in *Hansische Geschichtsblätter* for 1871, pp. 11-53; R. Quauer, *Die Schand- und Ehrenstrafen in der deutschen Rechtspflege* (Dresden, 1901), pp. 114 ff.; Hans Fehr, *Das Recht im Bilde* (München and Leipzig, 1923), pp. 109, 169 f., n. 110, and plates 138 and 221; L. von Bar, *Handbuch des deutschen Strafrechts* (2d ed., Berlin, 1882), p. 103, n. 423; Richard Schröder, *Lehrbuch der deutschen Rechtsgeschichte*, ed. Eberhard von Künsberg (7th ed., Leipzig, 1932), p. 834; Rudolf His, *Geschichte des deutschen Strafrechts bis zur Karolina* (München and Berlin), 1928, art. 19, pp. 92 ff., with *Schrifttum*, pp. xiii ff. (*Handbuch der mittelalterlichen und neuern Geschichte . . .* Abt. III: *Verfassung, Recht, Wirtschaft*).

For the Netherlands I use the carefully discriminating article by J. Verdam, “Over eene middeleeuwsche Straf,” *Handelingen en mededeelingen van de Maatschappij der Nederlandse Letterkunde te Leiden over het Jaar 1901-02*, II, 27-42, and two works referred to by Verdam which are of independent value, P. C. Molhuizen, “Aanteekeningen uit de *Geschiedenis van het Strafrecht*,” *Bijdragen voor Nederlandse Geschiedenis en Oudheidkunde*, N. R. II (1860), 51-88, 195-239, and M. J. Noordewier, *Nederduitsche Regtsoudheden* (Utrecht, 1853). Cf. also K. J. Frederiks, *Het Oud-nederlandse Strafrecht* (Haarlem, 1918).

sturdy beggars, were to be thrown from the *Schupfe* at Regensburg in 1306, bakers were so treated there in 1320, and in 1326 a baker, rendered desperate like Wackerbold after such punishment, stabbed the village priest and was killed by the mob. By 1340, a statute at Vienna directed that bakers "sol man schupfen" according to ancient law, and a Silesian law-code of 1346 punished the baker who baked his loaves too small by placing him in a basket hung from a pillar; knife in hand, he could wait until he felt disposed to cut the basket and fall into the pit beneath.<sup>5</sup> These illustrations could be continued for many

<sup>5</sup> Reval: *Livländisches Urkundenbuch*, ed. Bunge, I, No. 77, art. 29. "Quicunque habens legitimam in sua patria et duxerit alium in Revalia vel alias, si convictus fuerit, dabit X marcas argenti ubi vel precipitabitur de scuppestol." See Frensdorff, p. 35.

Lübeck: *Codex juris lubeccensis*, in *Monumenta inedita rerum germanicarum*, ed. E. J. de Westphalen (Leipzig, 1743), III, 639.

Brandenburg: Frensdorff, p. 33. "Qui falsa et nequam cemptione seu vendicione promovererit sedere in sede que dicitur scupstol, arbitrio consulum et iudicio eorum subjacebit."

Rostock: *Mecklenburgisches Urkundenbuch*, IV (Schwerin, 1866), No. 2697, "Mauricius ortulanus . . . excessum perpetravit, propter quem fuit projectus in scuppestol et abjuravit terram et civitatem." Cf. Frensdorff, p. 325.

Cologne: *Quellen zur Geschichte der Stadt Köln*, ed. L. Ennen and G. Eckertz (Köln, 1863-79), II, 556, No. 508. ". . . cum illo intervallo sive spacio, quod interiacer inter ipsas bankas et schüppestüel. . . ." Cf. Theodor J. Lacomblet, *Urkundenbuch für die Geschichte des Erzstifts Köln* (Düsseldorf, 1840-58), II, 591, and Frensdorff, p. 33.

Augsburg: *Stadtbuch von Augsburg*, ed. Christian Meyer (Augsburg, 1872), p. 197. "suelther daz veichen bachtet, daz ist: suelther leie brot daz ist anders als davor geschriben stat, daz heizet das veichen, daz sol der burggrafe hinz im rihten mit der schupfen. . . ." Another pertinent passage is on page 52. Cf. Walch, *Vermischte Beyträge zu dem deutschen Recht* (Jena, 1771-93), IV, 354.

Regensburg: *Regensburger Chronik*, ed. K. T. Geminer (Regensburg, 1800), I, 463. "Wer überredet wird, dass er ein Russan sey, den soll man von der Schuphen werfen in die Patzenhüll."

P. 509: "Wenne ein Becke zu klein bake, . . . er solle geschupft werden nach altem Recht." Cf. p. 519, and for the homicidal baker, Joseph Freiherr von Hormayr, *Tuschenbuch für die württembergische Geschichte*, N.F. V (1834), 233, and Nork [Friedrich Korn] in Scheible's *Das Kloster*, XII (1849), 1139.

Vienna: *Rerum austriacarum scriptores*, ed. Rausch (Vindobona, 1744), III, 54. "Die pekchen sol man schuphen, als von altem fürstlichem recht herchomen ist." Cf. Karl Dietrich Hüllmann, *Städtewesen des Mittelalters* (Bonn, 1829), IV, 78.

Silesian code: H. A. Berlepsch, *Chronik vom Bäckergewerk*, as above, p. 110. "Wenne der becker sin wandil vorwirkit in keiser weichbilde mit ezu clinem brotbacken das ist usf den korp gesaczt an eyn Sule gehangen und ein messir in die hant gegeben und eine Segmel her sieczce wile langk adir kurcz hernedir mus her falten in der pfützcia stracz." Also in J. E. Böhme, *Diplomatica*

pages, but these few suffice to demonstrate that the punishment was used in much the same way as ducking in England; some of the examples quoted in the *Deutsches Wörterbuch* are more specific than any from across the Channel.<sup>6</sup>

Etymologically, the word is Germanic, *scupha* being not a Latin word but the Old High German *scupfa*, meaning 'Schaukelbrett,' seesaw. The Middle High German noun *schupf* means 'a swing, or a tossing, rocking motion'; the verb *schupfen* 'to move with a rocking motion.' Modern German *schieben*, 'to shove, push,' and Old English *scūfan*, with the same meaning, are related.<sup>7</sup> The swinging motion implied in the word is persistent, for it appears both in Sanskrit and in an English dialectal form, *shue* or *shoo*, which latter means 'to swing, play at seesaw,' and a strange-looking variant with the same meaning is *shog-shue*. Now Jacob Grimm quotes from a statute of Schleiz, some twenty miles northwest of Plauen, of the year 1625, a regulation that "women who scold at one another are to have the punishment *des alten schocks*"—of the old *schock*; and this word, too, means something that oscillates, swings, or shakes.<sup>8</sup> We have some further idea of what the punishment "des alten schocks" was in the light of the meaning of Modern

*Beyträge zur Untersuchung der schlesischen Rechte und Geschichte* (Berlin, 1770-75), II, i, p. 24.

<sup>6</sup> *DWB*, s.v. *korb*, column 1803.

<sup>7</sup> Friedrich Kluge, *Etymologisches Wörterbuch der deutschen Sprache*, ed. A. Götze (11th ed., Berlin and Leipzig, 1934), s.v. *Schnpf*; Lexer, as above.

<sup>8</sup> *Oxford Dictionary*, s.v. *shue*; *English Dialect Dictionary*, s.v. *shue*, *shoo*. Jacob Grimm, *Deutsche Rechtsaltertümer* (4th ed.), II, 315, from Walch, *Vermischte Beyträge zu dem deutschen Recht*, VIII, 78. Matthias Lexer, *Mittelhochdeutsches Handwörterbuch*, s.v. *schoch*, *schocken* swv. ("oscillum, oscillare"); and cf. the *Nachträge*.

According to the *Versuch eines bremisch-niedersächsischen Wörterbuchs . . . , herausgegeben von der bremischen deutschen Gesellschaft* (Bremen, 1770), s.v. *schoke*, *schöke*, *scheuke*, the word "heisst im Bremischen, als auch vornehmlich im benachbarten Frieslande, eine unzüchtige Weibsperson . . . Von dem Alt Fries. *schechen* oder *scheken*, welches von Töchtern gebraucht wird, die sich ohne Vorwissen, und wider den Willen, ihrer Aeltern und Verwandten, an einen Mann hängen." Again, the verb *schocken* is said in the *Allgemeines Wörterbuch der Marine*, ed. Johann H. Röding (Hamburg and Leipzig [1795]), to mean a sort of repetitive motion: "Ein Schiff das auf dem Grunde gesessen und bey der Fluth angefängt flott zu werden, schockt, das heisst, es fängt an sich zu bewegen und fortzuschieben, wenn man Segel heysetzt."

English *jog* and the dialectal *shog*, M.E. *shogge*, 'to shake, jolt'; and what looks like a combination of the two forms appears in Scotland, Ireland, and the North of England in *shuggie-shu*, used by Sir Thomas Urquhart as *shoggieshou* to translate *la brandelle* of Rabelais—a "balancer," seesaw. *Shog-glety*, too, is a dialectal word for 'insecure, tottering.'<sup>9</sup> It is worthy of notice here also that *schupfe* and *schandkorb* have three additional synonyms, *wippe*, *schnellgalgen*, and *preller*. *Wippe* is related to Latin *vibrare* and means in Old High German 'a quick motion, swing,' in Modern German 'a seesaw, rocking-board.' In mechanics it means 'a bascule,' in telegraphy 'a tumbler-switch,' and *auf der Wippe stehen* is idiomatic for 'to be on the point of being upset.' We are here very close to the idea behind *trebuchet*. The *schnell* in *schnellgalgen* is the familiar adjective, the verb *schnellen* meaning 'to move quickly.'<sup>10</sup> *Preller* is associated with the verb *prellen*, which means 'to toss up and down,' as in a blanket, the root having the idea 'tight, stretched,' as is the blanket.<sup>11</sup>

Such in brief are the German punishments which are seen to have motion implied; they are transitive, so to speak—through moving they act upon the person to be punished. Now we shall glance as briefly at another group in which motion seems basically lacking.

"The Middle Ages showed great ingenuity in contriving ignominious punishments," says one student of criminal law, and names a dozen used in Germany alone.<sup>12</sup> Were we to take each one listed by him and follow out its history carefully, no doubt we should learn much of the early stages of criminal law which would serve us in good stead for the present purpose, but since any one of them would fill a small volume, we must mention here but one other of these punishments, the one known in the lands of the Low German dialects as *der kaak*.

The municipal code of Lübeck for the year 1294 responded to we know not what local emergency in decreeing that

<sup>9</sup> *Oxford Dictionary and English Dialect Dictionary*, s.v. *shuggie-shue*.

<sup>10</sup> Kluge (11th ed.), s.v.

<sup>11</sup> *DWB* and Kluge (11th ed.), s.vv.

<sup>12</sup> Rudolf His, *Geschichte des deutschen Strafrechts bis zur Karolina*, p. 94.

Any man who falsely boasts that he has lain with a maid or woman and that she is his actual or betrothed wife shall be fined forty silver marks; if he has not this sum, he shall subsist for six months on bread and water and then be set on the *kak*.<sup>13</sup>

Wizards and their kind were set on the *caeck*, in the fourteenth century, says Jehan Boutillier of Tournai.<sup>14</sup> Such instances were very common, *der kak* being simply a pillory; as we shall see, originally it was probably stationary. By multiplying examples we could give the impression that it was always so, but, like the English instrument, it refuses to remain one thing. Perhaps the stationary came to be mixed with the ducking punishment because sometimes both were applied one after the other to the same offender. E.g., at Leyden in 1485, a purse-snatcher was placed on "de kaak" and then swung in a basket attached to a wine-crane. After he had let himself out and had fallen into the water, he was banished. The same fate befell a man for beggary in 1511.<sup>15</sup> In 1471, a man of drunken habits having accumulated two wives, he was made to stand *op die kaeck* for an hour, then hauled up in a basket at the wine-crane. He stayed in it until he had cut himself out. After that he was sent on pilgrimage to Rome.<sup>16</sup> The two become one at Ter Goude in 1446, where a bailiff's account-book says that the town had been suffering so much from vagabonds and beggars that the bailiff had a *kaeck* set up over the water, so that mis-doers could be placed in it, to remain until they cut themselves out.<sup>17</sup> This particular kind of *kaak* is described by Verdam as being a piece of apparatus consisting of an upright on which a timber was attached in such a way as to have free motion up and down; to one end of the timber was suspended some ob-

<sup>13</sup> J. H. Hach, *Das alte Lüneb. Recht* (Lübeck, 1839), p. 252.

<sup>14</sup> Somme rural (1603) cap. 356: "Goecklaer, tuevenaer oft waerzegger . . . valt in de boeten van gheset te wesen op dye caeck, behangeli nie groote letteren. . . ." Cf. Joseph Hansen, *Zauberwahn, Inquisition und Hexenprocesse im Mittelalter* (1900), p. 353.

<sup>15</sup> Verdam, as above, p. 52, from *De Nauvorscher* for 1852, p. 152.

<sup>16</sup> Verdam, p. 34, from *Leidsche Rechtsbronnen uit de Middeleeuwen*, ed. P. J. Blok (1884) (Vereeniging tot Uitgave der Bronnen van het Oude Vaderlandsche Recht: Oude Vaderlandsche Rechtsbronnen, Eerste Reeks, No. 6), p. 76.

<sup>17</sup> P. G. Molhuysen, as above, p. 82; Verdam, p. 33.

ject, such as a cage or chair (or, as we have seen, a basket) and after the condemned person had been held swinging above the water for some little time, he was plunged into the water beside which the *kaak* stood, often until he was nearly drowned. This piece of apparatus is obviously a simple form of hoisting crane, as the expression "wine-crane" demonstrates. Whether it was called a *kaak* or a *mand* (basket), the water-punishment was used in Holland for several kinds of misdoers, including adulterers, abductors of women, and blasphemers against the saints, the Blessed Virgin, or the Trinity.<sup>18</sup>

The etymologists agree that *der Kaak* was originally motionless, something like a stump or tree-trunk. In Holland it first meant a barrel—and so it does to this day. Later it developed the special meaning 'pillory,' which spread to the other Low German regions and to Scandinavia. English *kag* is said to be a corrupted form of earlier English *cag*, a loan from Du. *Kaak*.<sup>19</sup>

<sup>18</sup> Verdam, pp. 31 and 33, the last from *Middeleeuwsche heuren der stadt Brielle*, ed. Handrik de Jager (1901) (Werken der Vereeniging tot Uitgave der Bronnen van het Oude Vaderlandsche Recht. Tweede Reeks, No. 2), p. 132, the former from Molhuysen, as above, p. 81.

<sup>19</sup> Van Dale, *Groot Woordenboek der Nederlandse Taal* (6th ed., 's-Gravenhage and Leiden, 1914); Johannes Franck, *Etymologisch Woordenboek der Nederlandse Taal*, ed. N. van Wijk (3d ed., 's-Gravenhage, 1912), and the *Supplement*, ed. C. B. van Haeringen (1936); Verwijs and Verdam (1894), s.v. *cake*; H. Falk and A. Torp, *Norwegisch-Dänisches etymologisches Wörterbuch* (Heidelberg, 1910-11), s.v. *kag* (these editors point to a Primitive Germanic \*kaka-); A. Torp, *Nynorsk etymologisk Ordbok* (Kristiania, 1919), s.v. *kage*, *kakk*, 2; Elof Hellquist, *Svensk etymologisk Ordbok* (Lund, 1925), s.v. *kök*. Through the kindness of Professor Thurneyen, Professor H. Hempel confirms my impression that there is no special etymological study of *kaak*. F. Holthausen discusses it briefly in *Indo-Germanisches Jahrbuch*, XLVIII (1930), 260.

On this 'pillory' group of punishments—*Pranger*, *Kak*, *Schreieck*, *Staupe*, *Hals-eisen*—see the brilliant monograph by Eberhard Freiherr von Künsberg, *Rechts-sprachgeographie* (Heidelberg, 1926) (Sitzungsberichte der Heidelberger Akademie der Wissenschaften, Phil.-hist. Kl., Jahrg. 1926/27, 1. Abhandl.), with maps; G. Bader-Weiss and K. S. Bader, *Der Pranger* (Freiburg im Breisgau, 1935), with useful bibliography, pp. 209-227 (to it may be added on the pillory in France pertinent sections of Camille Enlart's *Manuel d'Archéologie Française*, II, Paris, 1916, and see *Indices of L'Intermédiaire des chercheurs*, s.v. *pilori*); von Künsberg, *Rechtliche Volkskunde* (Halle/Saale, 1936), pp. 169 ff., 172 ff. Particularly interesting are works referred to by the Baders and by von Künsberg, G. Bernaldo de Quirós, *La Picota: Crímenes y castigos en el país castellano en los tiempos medios* (Madrid, 1907) (Biblioteca de Derecho y de Ciencias Sociales), and Luís Chaves, *Os Pelourinhos portugueses* (Gaia, 1930) (Estudos-Nacionais No. 2); both illus-

However solid a stump it may have designated at one time, *der Kaak*, like many another word, was no respecter of its own etymology, for we have seen that it could develop powers of movement, if not of locomotion like the *cucking-stool*, for, just as we are told occasionally that a woman was cucked in the *ducking-stool* or ducked in the *cucking-stool*, we have the once immovable *kaak* turned into the obviously agile *Gackschupffe* at Erfurt about 1325.<sup>20</sup>

These hasty glances at two or three of the dozen or more

trated. Another which they mention, Hugo Matthiessen, *De Kagstrøgne* [= those who were whipped at the *Kag* or pillory]; *Et Blad af Prostitutionens Historie i Danmark* (København, 1919), I have not seen.

Ladders were used in France, Germany, and England to exhibit criminals—possibly because ladders were used to conduct the condemned to the gallows. The *Badets* (p. 40) regard the ladder as of small importance in France, but it seems to have been quite widely used, having been one of the rights of *haute justice* from an early period. See, e.g., Ducange (1883), s.v. 1 *scula*, 3 *sculare*, *scelatio*, and for text Vol. X, p. cxxxvi; *Nouveau coutumier général*, ed. Charles A. Bourdot de Richebourg (Paris, 1724), I, n. p. 226; II, n. p. 1140; Jean Bacquet, "Traité des droits de justice haute, moyenne et basse," in his *Oeuvres* (Paris, 1664), III, 2 (chap. ii, art. iii); B. Saint-Edme [pseudonym of Edme Théodor Bourg], *Dictionnaire de la pénalité* (Paris, 1829-34), II, 445-449; Antoine Loysel, *Institutes coutumières . . .*, ed. M. Dupin and E. Laboulaye (Paris, 1846), I, 297 ff.; Charles Desmaze, *Les pénalités anciennes* (Paris, 1886), pp. 32 f., 75-79; A. Allard, *Histoire de la justice criminelle au seizième siècle* (Gand and Paris, 1868), pp. 16 ff.; Jean le Foyer, *Exposé du droit pénal normand au XIII<sup>e</sup> siècle* (Paris, 1931), p. 244. For a case in Germany in 1420, see Hansen, *Zuüberwahn . . .*, p. 374. For ladders in England, see Brushfield, pp. 217, 227; Thomas Wright, *Archaeological Album* (1845), p. 52; *Archæologia*, XXXI (1846), 203 f.; *Three Fifteenth-Century Chronicles*, ed. James Gairdner, p. 110 (Camden Society, N. S., XXVIII, 1886). Interesting here as showing possibly how exhibition on a ladder arose is the statement by Jean Imbert in *Les instituts de pratique en matière civile et criminelle . . .* (Paris: Imprimerie de J. de Marnef, 1545), fo. K iii verso (end of chap. iii): "Oultre, y a autre genre de supplice, comme estre mytré, & mis au regard, & contemplation de tout le monde, en lieu publicque, par trois, ou quatre fois, le cordeau au col, le bourreau present: ou estre en une eschelle lyé par l'espace de trois, ou quatre heures. Et desdictz supplices on use, quand pour le délit on a merité la Mort: mais, pour quelque cause, comme au moyen de la qualité de la personne, ou autre raison, on mitige, & adoucist-on la peine, & adiuge-lon lesditz supplices au lieu de Mort." Cf. the fourth edition (Paris, 1609), III, chap. xxi, p. 766.

<sup>20</sup> Johann Heinrich von Falckenstein, *Historie von Erfurt* (Erfurt, 1739), p. 207 (ca. 1320-28): "Der Voigt hat zu setzen und abzusetzen, wann es ihm gefelt, den Scharfrichter, der Voigt soll machen oder machen lassen den Galgen, das Henckerhaus, den Gackschupfen. . . ." The reference is from *DWB*, in which the other reference (to p. 47, not p. 46) to *kaaco* as being equivalent to *schuppha* is not borne out by the text, which reads, "Item idem Advocatus habet facere seu fieri patibulum, domum lictoris, Kaconem, Schuppham, &c."

pertinent institutions in Germanic countries having supplied us with parallels to the English punishments, we move now to the countries farther south.

#### FRANCE AND ITALY

On the seventh of May [1624], we sentenced one Jeanne Coustotz, of Leyrat, and one Marguerite Delber, of Laroque-Tymbault, fallen women who once before had dragged the cart and been banished the town for having been found with the above-mentioned thieves, to be banished anew and dipped in the water three times each in the iron cage kept at the town hall, and this done to be banished the town and jurisdiction. On the same day the sentence was executed and the said women were bathed in the said cage by means of a pulley which was set up on the dam behind the powder-tower. Everybody in town turned out to see it.<sup>21</sup>

During several centuries, Toulouse was familiar with this punishment for prostitutes. An eye-witness describes the procedure in the eighteenth century.

The woman sentenced having been led to the town hall, the Exécuteur de la Haute Justice binds her hands and puts on her head a conical hat decorated with feathers and little bells, on her back a placard bearing in large letters the words MAQUERELLE PUBLIQUE. In this outfit she is led on foot from the town hall to the bridge, and from there to the dock at the Garonne. She is taken by boat to a rock in the middle of the river. On it is an iron cage which the executioner forces her to enter. Then he sooses her three times in the water, at intervals so that she will not be drowned. This show attracts very nearly all the people of the town. When it is all over, she is imprisoned for life.

On April 5, 1569, the executioner was directed to put in the cage on the Garonne and duck three times a blasphemer named Treille, who was then to be banished for five years.<sup>22</sup>

<sup>21</sup> Jules Andrieu, *Un châtiment singulier: Notes sur les mœurs agenaises d'autrefois* (Agen, 1885), p. 12. This rare and recondite pamphlet, of which one hundred copies were printed, I used at the Bibliothèque Nationale. In collecting examples from France, I have been helped by notes in *L'intermédiaire des chercheurs*, XVIII (1885), 482, 568; XXXVIII (1898), 838; LVII (1908), 210; LXIV (1911), 518 ff., 707; LXV (1912), 88.

<sup>22</sup> Jean-Antoine Soulages, *Traité des crimes* (Toulouse, 1762), I, 262 f., and B. de la Roche-Flavin, *Arrests notables du Parlement de Toulouse* [Colo-

Philippe II hated swearing and blasphemy so much that he ordered that anyone committing either in public should be straightway thrown into the river. This is the earliest instance I have seen of the punishment in France, if this can be clearly said to be the punishment which we are studying. At Avignon in 1243 a man who had taken holy names in vain and could not pay the fine required was to be thrown fully clothed and shod into a ditch where the water was deep—but “don’t let him sink!”<sup>23</sup>

In 1407, the ordinance of 1332 which prescribed ducking three times for blasphemers was reaffirmed. To Angoulême and Rouen in 1372, Charles V accorded the privilege of ducking a quarrelsome, scolding, cursing woman three times in the water, the method being to tie a rope under her shoulders. The charter of the Commune de Roan, at the mouth of the Gironde, which was based on that of Rouen, echoes this last. These are the sole instances known to me of such a punishment for scolds in France. The frequently adulterous wife at Ypres was to be thrown into a well in 1531. Whether she was drowned we are not told, but the punishment must have at least symbolized drowning.<sup>24</sup>

meiz], 1617), p. 27 (misnumbered for p. 26), Tit. 18, art. iv. For other occurrences of this punishment at Toulouse, see Guillaume de Catel, *Mémoire de l'histoire du Languedoc* (Toulouse, 1633), p. 200 (in 1508, for blasphemy); Germain de la Faïe, *Annales de la ville de Toulouse* (Toulouse, 1887), I, 188 (blasphemy); *Histoire pratique des pratiques superstitieuses* (Rouen, 1702)—cf. *L'intermédiaire des chercheurs*, LXXV (1612), 88; Pierre Barthès, *Les heuves perdues*, ed. E. Lamouzèle (Toulouse, 1914), pp. 119 f. (prostitution). This last reports a punishment on June 4, 1749, enjoyed by more than ten thousand people. It took a long time, because the executioner could not get the seesaw (*la bascule*) to go up or down. The victim died four days later. Cf. pp. 306, 395. On pp. 187 f., 318, 330, 348, we learn that the skimmington was used for the same offense. Other occurrences are mentioned in *Paratitia in quinque libros Decretalium Gregorii IX, auctore Innocentio Gironus . . .* (Tolosa, apud P. Bois, 1615), p. 433 (for blasphemy); le Conseiller Dubédat, *Histoire du Parlement de Toulouse* (Paris and Chateauroux, 1885), I, 461 (for sorcery: sixteenth century).

<sup>23</sup> Jousse, *Traité de la justice criminelle en France* (Paris, 1771), I, 262. At Avignon: Ducange (1883), s.v. *blasphemare*—“Habita cautela ne submergatur.”

<sup>24</sup> Jules de Lahondès, *Annales de Pamiers* (Toulouse, 1882-84), I, 194 f. If the blasphemer “no pot pagar [the fine of 20 sous] stara a la polugia et sira cabussat per tres vets en layga en camisa.” *Cabussat* reminds us of the trebuchet. *Les Ordonnances des Roys de France de la Tercière Race . . .* (Paris: Imprimerie Royale, 1736), V, 668: “Si femina convicatur esse litigiosa & maledica, alligabitur

Near Abbeville, in 1533, at Saint-Valéry, the town fathers decided that something had to be done about the prevalence of adultery.

Henceforth no man or woman is to commit adultery on pain of being put into a *brincqueballe* to be made and placed on one of the rivers of the town, and there dropped and plunged overhead.<sup>25</sup>

The word *brincqueballe* M. Boca interprets as "levier qui sert, sur les vaisseaux, à faire jouer le piston des pompes," presumably a quotation from Hatzfeld-Darmesteter-Thomas. Putting adulterous people in a pump-handle, even one worked by a riding-beam, does not give us much of a picture; but if we pursue the matter a little farther, we find the same authorities giving *brimbaler* as an abbreviated form of *bringuebaler*, which in turn may have something to do with dancing, the almost-losing and regaining of one's balance. Anyhow, *brimbaler* means 'to cause to oscillate,' as of bells—and once again we come upon our basic idea which we have seen now many times,

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fune subter ascellas, & ter in aquam projicietur; cui si quis vir exprobraverit, pagabit decem Solidos. Si vero formam exprobraverit, decem Solidos pagabit, & ter in aquam projicietur." The gallantry of France was extended even to scolding women. Cap. ix of the *Establishments de la Commune de Roan* is a fairly close translation; e.g., "Si femme est convaincue destre tensore ou medisanz, ele sera liee ob vne corde soz les aysesles. . . ."—*The Black Book of the Admiralty*, ed. Sir Travers Twiss, II (1873), Part II, Appendix; cf. p. 416 (Reuum Britannicarum medii aevi scriptores). On tying the rope instead of using a container of some kind, see Chapter IV below. Perhaps the idea of dipping scolds came from England.

For *Les Loix, Coutumes . . . d'Ipre*, see *Le Nouveau Coutumier Général*, ed. Charles A. Bourdot de Richebourg (Paris, 1724), I, Part 2, p. 827. Throwing a woman into a well, "dans le puits," reminds of Burns's "The Jolly Beggars": "For monie a pursie she had hooked,/And had in ironie a well been docked." Folk-law and written law, the expression of moral reproof and of "justice," are very close here. Near La Rochelle at the end of the fourteenth century, on Trinity Sunday the young men ducked in a ditch full of water adulterous spouses (Ducange, 1883, s.v. *adulterium*, col. 101); in the nineteenth century, a Swiss lass out late at night was likely to be treated to an involuntary bath (Claude-Joseph Tissot, *Le droit pénal*, Paris, 1860, II, 201); at Maubeuge, in the fifteenth century, "le roi des ribauds" dumped fallen women out of a basket into the water (*L'intermédiaire des chercheurs*, XXXVIII, 1898, 838). Whether agricultural rites should be invoked here will be discussed later.

<sup>25</sup> Jean Boca, *La Justice criminelle de l'Échevinage d'Abbeville au moyen-âge, 1184-1516* (Lille, 1920), pp. 77 f. (Bibliothèque de la société d'histoire de droit des pays Flamands, Picards et Wallons IV); and cf. *L'intermédiaire des chercheurs*, LVIII (1908), 210.

the idea of teetering, of balancing to and fro as does the beam of a balance.

Prostitutes and procurers were plunged into the river in an iron cage at Bordeaux in the sixteenth century, and at Bayonne under Louis XV was revived the medieval custom of ducking prostitutes in an iron cage from the parapet of one of the bridges, to the great joy of the bystanders.<sup>26</sup>

My impression is that these punishments were not widely used in France; certainly, adultery and blasphemy remained in general crimes tried under the ecclesiastical jurisdiction, and although mutilation by civil authorities was now and again resorted to, such as piercing or excision of blasphemous tongues, for reasons which will appear in Chapter IV, the Church did not resort to ducking, and this practice was restricted to a few places.<sup>27</sup>

<sup>26</sup> G. de Lurbe, *Anciens et nouveaux statuts de la ville et cité de Bordeaux* (Bordeaux, 1612), pp. 118 f.; Albert Babeau, *La Ville sous l'ancien régime* (Paris, 1880), p. 337. At Abbeville, in 1478, at Amiens, in 1562, procuresses were carted —a kind of skimmington on wheels—Jean Boca, as above, p. 202, and A. Dubois, *Justice et bœufs à Amiens dans les XV<sup>e</sup> et XVI<sup>e</sup> siècles* (Amiens, n.d. [1860?]), p. 30.

<sup>27</sup> On ecclesiastical penalties in France for adultery similar to those alluded to in Chapter II above, see Jean Duret, *Traité des peines et amendes* (Lyon, 1573), fo. 20; Jousse, *Traité de justice criminelle en France* (Paris, 1771), II, 212-248, and p. 273 for a statement, not intended to be humorous, that it would have been impossible to punish all of the guilty ones; Victor Sièye, *Traité sur l'adultére considéré au point de vue historique et juridique chez les peuples de l'antiquité à Rome, dans le droit canon et dans la législation française* (Paris, 1875), p. 320. This last is a serious study of a subject often treated popularly by French writers. Cf. also Albert Du Boys, *Histoire du droit criminel de la France* (Paris, 1874), II, 87. Louis Le Pileur, *La prostitution du XIII<sup>e</sup> au XVII<sup>e</sup> siècle, Documents tirés des Archives d'Avignon, du Comtat Venaissin, de la Principauté d'Orange, et de la ville libre Impériale de Besançon* (Paris, 1908), knows nothing of the punishment by ducking, thus to a certain extent confirming my impression.

On the peculiarly Christian crime of blasphemy, see Agustín Coy Cotonat, *Blasfemias y Obscenidades en el lenguaje* (Barcelona, 1918), the article in A. Vacant's *Encyclopédie de théologie catholique* (1904), and Josef Kohler, *Studien aus dem Strafrecht* (Mannheim, 1897), V, 606-617. Of central importance is the decretal (1231) of Gregory IX (lib. V. tit. xxvi. c. 2, *De maledicis*, cols. 826 f. in *Decretalium Collectiones*, ed. Friedberg, II, 1881), which continues to order public penance for blasphemers. Useful also are Antonin Pertile (see next note below); James F. Stephens, *History of the Criminal Law of England* (London, 1883), II, chap. xxv, pp. 396-497; Hypatia B. Bonner, *Penalties upon Opinion: or Some Records of the Laws of Heresy and Blasphemy* (London, 1912); G. D. Nokes, *A History of the Crime of Blasphemy [in England]* (London, 1928), which is usefully supplemented by *An Abstract of the Laws against Profaneness, Immorality &*

For Italy I have been able to find no reports of the more vivid sort, but occasionally a statute gives us information sufficiently precise to show that ducking was used there also.<sup>28</sup>

It was the custom at Vicenza in 1264 to put a blasphemer into a basket and plunge him three times into the water, a *cigognola* being used—apparently, from the name, ‘stork,’ a kind of crane or hoist.<sup>29</sup>

At Verona in 1228, the blasphemer who did not pay his fine was to be publicly whipped or “basketed”; at Mantua also *corbelletur in lacu ita quod submergetur*; at Rovereto a well was used. At Riva, the combination of stationary and moving punishments appeared, as we have seen it appear in England and Germany and Holland: “ter in lacu submergatur, vel ad catenam Palatii per unam diem stare Cogantur ad collam acinctam.” In 1431 the statutes of Orgiano decreed that the blasphemer, fully clothed, be plunged into a wine-barrel full of water: “ter submergatur in una tina plena aquae omnibus pannis et sic vituperetur ut aliis transeat in exemplum.”<sup>30</sup>

*Blasphemy . . .* (London, printed by R. Baldwin, 1698); Walter B. Odgers, *The Law of Libel and Slander* (6th ed., London, 1929).

<sup>28</sup> Antonio Pertile, *Storia del diritto italiano* (2d ed., Torino, 1892-1903), V, 248-259, 341-353; he refers to the long note on the subject by Fedele Lampertico in his edition of *Statuti del Comune di Vicenza MCCLXIV* (Venezia, 1886), p. 186 (Monumenti storici pubblicati dalla R. Deputazione Veneta di storia patria. Serie seconda. Statuti. Vol. I); Josef Kohler, *Strafrecht der italienischen Statuten vom 12.—16. Jahrhunder* (Mannheim, 1895-97), V, 615 (Studien aus dem Strafrecht); Georg Dahm, *Das Strafrecht Italiens im ausgehenden Mittelalter* (Berlin and Leipzig, 1931), p. 406 (Beiträge zur Geschichte der deutschen Strafrechtspflege III). See also Hermann Usener’s essay on the Roman background, “Italische Volksjustiz,” in his *Kleine Schriften* (Leipzig and Berlin, 1912-14), IV, 356-382, reprinted from *Rheinisches Museum*, LVI (1900), 1-28.

<sup>29</sup> Lampertico, p. 186, “Item consuetudo est quod qui blasphemiam dixerit in Deum et Matrem suam Virginem Mariam super ludum et ludendo, solet perdere XX soldos, vel poni debet ad corbellam, et ter in aqua submergi, et medietas sit accusatoris, et alia medietas communis et accusator teneatur in credentia, et potestas per sacramentum ipsum teneat et teneri faciat in credentia, et detur fides accusatori, dicente accusatore quando fuit et ubi.” Another reads, “submergatur ter cum cigognola in aquam.” Cf. Latin *ciconia*, French *cigogne*, ‘stork’ (the bird as well as the hoisting apparatus). Modern French prefers *grue*, ‘crane,’ L. *grus*, like German *Kran*, Dutch *Kraan*, English *crane*. Both birds, of course, are skilled “balancers,” and the terms were widely transferred to hoists with like technique.

<sup>30</sup> These I take from Fedele Lampertico, as above. For additional examples, see the other works which I mention in the same note. Ducking in the sea was a punishment for Austrian sailors in the eighteenth century, Lampertico points

We terminate our brief ramble on the Continent and return to England with rather more plunder than most trippers.

out. English seamanship knows it as keel-hauling. Richard Cœur de Lion used it, also; see the statute *Illorum qui per mare sturi erant* in Thomas Rymer's *Foedera* (London, 1704), I, 65. The use of the wine-barrel reminds of secret executions by drowning in barrels in Holland; see Heinz Goldschmidt, "Das Ertränken im Fass," *Zeitschrift für vergleichende Rechtswissenschaft*, XLI (1925), 123-470; XLII (1926), 248-288, and my note on "Clarence in the Malmsey-Butt," *Modern Language Notes*, II (1936), 166-173.

## WOMEN IN THE WATER

## WITCHCRAFT?

AT HONITON, Devonshire, in 1760,

I took notice (says Giuseppe Baretti) of an engine called a Ducking-stool. . . . It is a stool to sit on. A kind of armed wooden chair, fixed on the extremity of a pole about fifteen feet long. The pole is horizontally placed on a post just by the water, and loosely pegg'd to that post; so that by raising it at one end, you lower the stool down into the middle of the rivulet. . . . That stool serves at present to duck scolds and termagants: but it is said, that the superstitious inhabitants of Honiton used formerly to place on it those old women whom they thought to be witches, and duck'd them unmercifully several times; sometimes to death.<sup>1</sup>

Devon and Cornwall having contributed a half-dozen of our examples of theucking-stool before 1600, it is not surprising that the institution should have survived there until Baretti's time. The novel part of this report is that "it is said" that the ducking-stool was used to duck old women *suspected of being witches*. Now the truth is that this local tradition has some basis, since women have actually been subjected to the test of cold water to prove whether they were witches, and this in England in the eighteenth century.<sup>2</sup> The possibility implicitly suggested here will not bear scrutiny, however, because although the likelihood, nay the certainty, of confusion among the folk of two sharply differing forms of procedure cannot be denied; nevertheless, the records of the ducking-stool as I know them and the records of testing witches in England betray no clear signs of reciprocal influence. The ducking-stool when used for ducking always involved a chairlike contrivance,

<sup>1</sup> Giuseppe Baretti, *A Journey from London to Genoa, through England, [etc.] (London, 1770)*, I, 6 f.

<sup>2</sup> George Lyman Kittredge, *Witchcraft in Old and New England* (Cambridge [Mass.], 1929), p. 236.

whereas the water-test for witches involved only a rope. The differences become greater the more closely we examine the tests for witches. For one thing, the washing of scolds in the cuckling-stood was definitely a punishment assessed for the commission of a misdemeanor, a punishment legally imposed by the secular authorities after trial had demonstrated guilt; the dipping of witches, on the other hand, was not a punishment but a means of ascertaining whether punishment ought to be used, the means of determining guilt being in this case not a jury, not witnesses, but the ordeal by cold water, the belief being that God separated the innocent from the guilty by causing the former to sink, the latter to float. This process being concerned with divine interposition in human affairs, the clergy were the operating agents. Now these two processes are obviously different. The spirit behind the ignominious punishment of the cuckling-stool is not the spirit behind the solemn ordeal, the ritual by which the will of God makes itself manifest.

"All peoples believe or have believed in water-spirits," wisely remarks a French student of classical mythology.<sup>3</sup> The

<sup>3</sup> Gustave Glotz, *L'Ordale dans la Grèce primitive* (Paris, 1904), p. 69, cf. p. 77. Chapter XV, "Cold Water," in Kittridge's *Witchcraft in Old and New England*, pp. 232-238, surveys the history of the ordeal by cold water, see especially the references, p. 536, among which the most comprehensive discussions are given by Henry Charles Lea, *Superstition and Torce* (4th ed., Philadelphia, 1892), pp. 318-334; F. Patetta, *Le Ordale* (Torino, 1890); Adolf Franz, *Die kirchlichen Benediktionen im Mittelalter* (Freiburg im Breisgau, 1909), II, 313-328, 355-357, 377-384; and *DR.A* (4th ed., 1899), II, 582-586. See also Hugh Goitein, *Primitive Ordeals and Modern Law* (London, 1923), chap. III (but note that "the customary index numbers [i.e., authorities] have been omitted to avoid spoiling the look of the page"—p. viii); Claudius Frh. von Schwerin, *Rituale für Gottesurteile* (Heidelberg, 1931) (Sitzungsberichte der Heidelberger Akademie der Wissenschaften, Phil.-hist. Kl., Jahre 1932/33, Abhandl. 3); Fritz Byloß, *Heretenglaube und Herrenverfolgung in den österreichischen Alpenländern* (Berlin and Leipzig, 1934) (Quellen zur deutschen Volkskunde VI), esp. p. 62. Still worth reading is William S. Gibson's "Some Ancient Modes of Trial, especially . . . Ordeals by Water," in *Archæologia*, XXXII (1847), 263-297. Cf. also Heinrich Brunner, *Deutsche Rechtsgeschichte*, II, ed. von Schwerin (2d ed., 1928), 551 f.; Louis de Héricourt, *Loix ecclésiastiques de France* (Paris, 1771), pp. 381 ff.; Albéric Allard, *Histoire de la justice criminelle au XVI<sup>e</sup> siècle* (Gand, 1868), pp. 22 f., 469-479; Émile Jobbé-Duval, *Les idées primitives dans la Bretagne contemporaine*, Vol. II, *Les Ordales ou jugements de Dieu* (2d ed., Paris, 1920), pp. 358 ff. (reprinted from *La nouvelle revue historique du droit français et étranger*,

special use of the trial by cold water for witches—it was used in Anglo-Saxon England to test the guilt of persons accused of such crimes as theft, homicide, adultery, arson, concealed knowledge of the commission of a crime, house-breaking, church-breaking, besides witchcraft—remained a sacred ritualistic ordeal, with carefully prescribed regulations as to the method of consecrating and trussing up the person undergoing the test as well as to the dimensions of the pit. At least it remains so as far as our knowledge of it in England extends; that is, up to 1219, when it was abolished by Henry III in conformity with the prohibition of the Fourth Lateran Council in 1215.<sup>4</sup> Thereafter we do not know what happened. It is reasonable to assume that the decree was observed in England and elsewhere. Whether the test was kept alive among the folk we do not know. It turns up again in the seventeenth century during the witchcraft hysteria, when the minds of men were sorely troubled over the legal methods of determining the guilt of witches, and it was often used in the eighteenth century. These survivals or revivals of the old tests apply only to witchcraft and not to the other crimes which the ordeals tested in Anglo-Saxon times, and they never to my knowledge applied to scolding.<sup>5</sup>

The differentiation is logical and may apply, but at the same

XXXIII, 1909; XXXV, 1911; XXXVII, 1913; XXXVIII, 1914); Paul Fournier in *Mélanges Gustave Glotz*, I (Paris, 1932), 367-376. Hubert-Pascal Amelihon, "Remarques . . . sur l'épreuve de l'eau froide," in *Collection des meilleurs dissertations . . . relatifs à l'histoire de France*, ed. C. Leber et al., VI (Paris, 1826), 420-442, thinks that the floating of the women may have been due to hysteria.

<sup>4</sup> Kittredge, *Witchcraft*, p. 234; Pollock and Maitland, *History of English Law* (2d ed., 1898), II, 599; W. S. Holdsworth, *History of English Law* (4th ed.), I, 311; Rymer's *Foedera* (1704), I, 228; Liebermann, *Die Gesetze der Angelsachsen*, II (1906), s.v. Kaltwasserordal. For the decree, see Concil. Lateran. IV. c. 18 in Joannes Mansi, *Collectio sacrorum conciliorum*, Vol. XXII (Venetius, 1778), col. 1007.

<sup>5</sup> Kittredge, pp. 235 f. On witchcraft see the same work and Wallace Notestein's *History of Witchcraft in England from 1558 to 1718* (Washington, 1911). Also useful are the two books by Montague Summers in the History of Civilization series, *The History of Witchcraft and Demonology* (London, 1926) and *The Geography of Witchcraft* (London, 1927), on which see Kittredge, p. 551<sup>et seq.</sup>, p. 565<sup>et seq.</sup>, and preface, second paragraph. On witch-trials see Wilhelm Gotthold Soldan, *Geschichte der Hexenprozesse*, ed. Max Bauer (2 vols., München, 1912).

time it must be admitted that if the recollection of the ordeal by cold water remained among the folk—since the ordeal had been well established there is no good reason why the recollection should not have endured—then the ordeal may have been transformed into the ducking of women as a punishment. Once the ordeal was stripped of its ritual, once the formal binding of hands and feet, the prescriptions about required depth, the prayers of consecration, had been abandoned, the objections of the faithful to its use outside the jurisdiction of the church would diminish. And anyhow, the old ordeal had been explicitly outlawed by the church itself.<sup>9</sup>

#### FURCA ET FOSSA

In the *Regiam Majestatem*, lib. I, cap. iv, there is a definition of jurisdiction—

De caassis spectantibus ad Episcopos, Barones, & Praepositos. Placitum civile, quod non est criminale, quo ad vitam, & membra, aliud pertinet ad Praepositos burgorum, & Civitatum: Aliud ad curiam Baronum, Comitum, Episcoporum, Abbatum, & aliorum libere-tenentium, qui curias suas proprias habent, secundum formam suarum Chartarum. 2. Et Quaedam placita criminalia, pertinent ad

<sup>9</sup> Witches were rarely punished by drowning. See Richard Schröder, *Lehrbuch der deutschen Rechtsgeschichte* (6th ed.), ed. von Künsberg, I, 386; Heinrich Brunner, *Deutsche Rechtsgeschichte* (2d ed.), ed. von Schwerin, II (1928), 616, 621, 639, 873 ff.; *Ancient Criminal Trials in Scotland*, ed. Robert Pitcairn (Edinburgh, 1833), I, i, p. 162; *Statutes of the Realm*, IV, i (1819), 446, 5 Elizabeth, cap. 16 and IV, ii, 1 James I, cap. 12; Kittridge (1929), p. 4151a. Note also once more the two meanings of *L. iudicium*, 'judgment' and 'punishment.' George E. Woodbine (in his ed. of *Glanvill De legibus . . .*, New Haven, 1932, p. 296) says that women were exempted from the ordeal of cold water, the ordeal of fire being used instead; but his authority, *Select Pleas of the Crown*, ed. Maitland (Selden Society, 1887), Nos. 12, 65, and 101, does not seem to put the matter beyond doubt. Willis's *Current Notes*, IV (1854), 30, quotes from the Corporation Records of Carrickfergus (northeast of Belfast in County Antrim) of October, 1574, this passage: "Ordered and agreeed by the hole Court, that all manner of Skolds which shall be openly detected of Skolding, and for the same shal be condemned before Mr. Maior and his brethren, shal be drawne at the sterne of a boate in the water from the end of the Peare rounde abought the Queene's majesties Castell, in manner of ducking; and after, when a cage shal be made, the party so condemned for a Skold, shal be therin punished at the discretion of the Maior." The same passage appears in Samuel McSkimin's *History . . . of Carrickfergus*, ed. Elizabeth M'Crum (Belfast, 1909), p. 347. Is this evidence of earlier punishment by drowning, or is it an adaptation of the ducking-stool?

quosdam praedictorum, & curias ipsorum: maxime qui habent, & tenent curias suas; cum socco, & sacca, furca, & fossa, *Toill*, & *Theme*, *Infang-thieve*, & *Outfang-thieve*.<sup>7</sup>

The two expressions which interest us here, *furca et fossa*, are explained for us by John Skene, in 1597. They needed explaining, for even at his time they were nearly five hundred years old. *Furca*, he says, is 'Ane gallous,' a gallows, on which male thieves were hanged; *fossa* is 'ane pit,' a place dug out in the earth, full of water, in which a condemned female thief was drowned. Those who have the right of *furca et fossa* therefore have the power of punishing thieves of both sexes who are caught in the act.

Already we have seen part of this jingle in connection with the jurisdiction of pillory and tumbrel. It seems to have been a rigmarole with little more meaning by the thirteenth century than eeny-meeny-miney-mo. It was not restricted to Scotland but was a commonplace of English charters as well.<sup>8</sup> Whether executing women in this fashion was ever common in England it is hard to say. The Anglo-Saxon laws refer to it infrequently, and later it turns up very rarely indeed. There are a few occurrences near the sea or on the Thames, but it seems reasonable to infer that it was more a symbol than an actual practice, and a symbol on parchment at that.<sup>9</sup> It is possible that it appears more frequently north than south of the Tweed because it was a punishment known to Roman law, which prevailed much more in Scotland than in England.<sup>10</sup> Perhaps the restric-

<sup>7</sup> John Skene, *Regum Majestatem Scotiae* (2d ed., Londini, 1613), fo 11, 10, for the text, and 10, for the explanation.

<sup>8</sup> See the discussion in Pollock and Maitland, *History of English Law* (2d ed., 1898), I, 576 ff., esp. p. 577.

<sup>9</sup> Liebermann, *Die Gesetze der Angelsachsen*, II (1906), s.v. Ertranken; J. Y. Akerman, "Furca et Fossa," *Archaeologia*, XXXVIII (1860), 54-65; Gaston Girald, *Art und Form der Strafe bei den Angelsachsen* (Diss., Zurich, 1920), pp. 46-48.

<sup>10</sup> Jacob Grimm, *Deutsche Rechtsaltertumer*, ed. Heusler and Hübner (4th ed., 1899), II, 278-282, who shows how widespread in comparison the punishment was on the Continent; so, too, does Kail von Amira, *Die germanischen Todesstrafen*, pp. 140-143, 176 ff., 198 ff. (Abhandlungen der Bayerischen Akademie der Wissenschaften, Philosophisch-philologische und historische Klasse, XXXI. Band, 3. Abhandlung, München, 1922); see also pp. 200-221, 390-392. Cf. Rudolf His, *Geschichte des deutschen Strafrechts bis zur Karolinen*, pp. 107, 150. For instances

tion that the woman must be caught virtually in the act made the execution of the punishment so difficult that it hardly ever became firmly established. That it did happen occasionally we know. Two instances in which women were drowned for thievery, and at that in a pool or pit, are known to me, one from the year 1200, the other from the fifteenth century.<sup>11</sup>

Since the punishment was thus rare in England, there is little likelihood that it had much to do with the development of the cucking-stool unless we are willing to conjecture that earlier than the time of the Anglo-Saxon laws it was widely prevalent; and we have no business making such a conjecture in the total absence of evidence. It is just possible that the cuckstool pit mentioned once or twice before 1600 may at one time have been a *fossa* for drowning; but given a desire to enforce the punishment of scolds by ducking in a district where there was no body of water large enough, the digging of a pit would be such an obvious step that we need not call on the *fossa* even for this.<sup>12</sup>

of women drowned in Scotland, see *Ancient Criminal Trials in Scotland*, ed. Robert Pitcairn (Edinburgh, 1833), I, "162, "394, II, 93, 94; III, 55, 206, 208, 551. Cf. also Hector Boece, "De Scotorum . . . moribus," in *Respublica, sive Status regni Scotiae . . .* (Lugd. Bat., 1627, Elzevir), pp. 89 f.

<sup>11</sup> Sir Henry Spelman, *Glossarium Archaeologicum* (3d ed., Londini, 1687), s.v. *furea et fossa*, Mary Bateson, *Borough Customs*, I, 75 f. (Selden Society, XVIII). Cf. Pollock and Maitland (2d ed.), II, 496.

<sup>12</sup> See *Oxford Dictionary*, s.v. *pit* for further discussion, and note the German proverb, "Den Dieb soll man henken, die *Hur* ertränken"; the *Hur* is not a mere prostitute, however, but one who has killed her illegitimate child, according to A. Chaisemartin, *Proverbes et maximes du droit germanique* . (Paris, 1891), p. 499.

L. A. Parry, *A History of Torture in England* (London [1933]), pp. 140 ff., adds nothing on punishment by drowning in England.

## THE PUNISHMENT FITS THE CRIME

The tongue is a fire, a world of iniquity: so is the tongue among our members, that it defileth the whole body, and setteth on fire the course of nature; and it is set on fire of hell. For every kind of beasts, and of birds, and of serpents, and of things in the sea, is tamed, and hath been tamed of mankind; but the tongue can no man tame; it is an unruly evil, full of deadly poison.

At once we are set right in our natural misconception of the offense of scolding, the connotation current today sending our thoughts to the gentle reproof of the mother to a little child who has dropped something or got its hands dirty. From numerous other places in the Bible than this third chapter of the Epistle of St. James, the ancient doctrine on the subject can be illustrated. One of the dramatic moments in the Old Testament, we remember, which medieval illuminators loved to treat, is provided by that occasion for one of the great curses upon man, the confusion of tongues. It arose from wordy dissension; and the twenty-first verse of the eighteenth chapter of the Book of Proverbs tells us that death and life lie in the power of the tongue. Tertullian as usual supplies his stiff burdoun to the stern daughter of the voice of God when he includes in his list of the seven mortal sins no less than three sins of the tongue, namely, idolatry, blasphemy, and false witness.<sup>1</sup> It was Tertullian, by the way, that "sponge steeped in wormwood and gall," as Richard Hooker cheerily called him, who vigorously championed the cause of public penance in a tract which influenced many later writers, including Calvin and John Knox.<sup>2</sup> This is one line, certainly, along which

<sup>1</sup> *Adversus Marcionem*, lib. IV, cap. xi; in Migne, PL II, col. 375B: "septem maculis capitalium delictorum inhorrent, idololatria, blasphemia, homicidio, adulterio, stupro, falso testimonio, fraude."

<sup>2</sup> *De penitentia*; in Migne, PL I. See especially cap. ix. For the background in classical antiquity, see, e.g., Hastings' *Encyclopædia of Religion and Ethics*, XI (1920), col. 586. The Greeks called slander *διαβολή*.

descended the consciousness and abhorrence of sins of the tongue in the later Middle Ages and hence of the Renaissance in England; but that another line must be borne in mind nobody will deny who is familiar with the *Poetic Edda* and with the sagas, replete with the bitterness of the feminine tongue as exemplified by the whetting of Guðrún, the vengefulness of Brynhildr, the grief-brewing propensities of the strong women of the sagas.<sup>3</sup> One striking example must suffice. In the *Poetic Edda*, the third *Guðrúnarkviða* swiftly tells of the outcome of a woman's sin of the tongue. Herkja, Atli's maid and concubine, informs Atli that she has seen Atli's wife, Guðrún, in bed with Þjóðrekr. Guðrún denies this and proves her innocence by successfully undergoing the ordeal of hot water; but Herkja's guilt is established when her hands are seen to be burned. Forthwith Herkja expiates the crime of slander in the old Germanic fashion. She is smothered in a swamp. "Thus did Guðrún avenge her wrongs."<sup>4</sup>

We are dealing here not with a dry list of theological abstractions, but with the infinite variety of human nature. In any case, our interest at the moment is not so much in the antecedents of the attitude toward the sins in general or toward the sins of the tongue in particular as in the attitude of Englishmen of the periods concerned in the development of the cucking-stool.<sup>5</sup>

<sup>3</sup> They are discussed briefly by Johannes A. Enander, *Våra Faders Sinnenlag* (Stockholm, 1894), pp. 87-100, by Jon Schrie (Skeie), *Om Ærekvenkelser etter norsk Ret* (Kristiania, 1910), by Jacob Grum, *Deutsche Rechtsaltertumer* (4th ed., 1899), II, 204-210, and, more generally, by Walther Gehl, *Ruhm und Ehre bei den Nordgermanen: Studien zum Lebensgefühl der isländischen Saga* (Berlin, 1937) (Neue Deutsche Forschungen, Abteilung Deutsche Philologie, Band 3).

<sup>4</sup> B. Sijmons, *Die Lieder der Edda*, I (Halle/Saale, 1888), 409 ff. (Germanistische Handbibliothek VII); the *Kommentar* (1931), pp. 317-323, esp. pp. 323 and vii (Germ. Handbib. VII, 3. 2), adds references to those collected by A. Le Roy Andrews in his edition of *Hálfssaga* (Halle/Saale, 1909) [Altnordische Saga-Bibliothek 14]. Full atonement for such offenses is exacted in ancient Norwegian law. See *Norges gamle Love indtil 1387*, ed. Rudolf Keyser, P. A. Munch . . ., I (Christiania, 1846), 57, 70; Laurence M. Larson's translation of *Gulatingslög, the Earliest Norwegian Laws* (New York, 1935), pp. 123, 143. Note especially that accusing an innocent woman of being a whore is punishable.

The fine for slander in ancient Irish law has slight importance here. See Hastings's *Encyclopaedia of Religion and Ethics*, IV (1911), 268.

<sup>5</sup> For general discussion of the sins on the Continent, see Hubert Gerigk, *Wesen*

At about the time of Chaucer's birth, Dan Michel produced the *Agenbite of Inwyt*, a translation from the French book by Frère Lorens of some threescore years before. Here the third head of the beast with seven heads and ten horns that St. John the Evangelist saw rise out of the sea is Hatred, and Chiding is the first of its seven twigs. The seventh head is Sins of the Mouth and Tongue, and it has ten parts—idleness, boasting, flattery, seduction, lying, perjury, strife, grudging, opposition, and blasphemy; strife (*cheaste*) has again seven boughs, strife, chiding, evil speaking, slandering, reproaching, threatening, discord.<sup>6</sup> Although translating from the French, Dan Michel was not the first writer in England to discuss the sins, for Columba and Alcuin, to name no more, preceded him by several centuries in Latin treatises on the *saligia*, a coined word of suggestive meaning based on what seems to us the strikingly modern device of selecting the initial letters of a list of words, in this case of the names of the sins as given by Gregory the Great—superbia, avaritia, luxuria, invidia, gula, ira, accedia. The small interest taken in the *Agenbite* does not mean that the seven sins were neglected in Middle English; far from it, for the whole ethical system of Chaucer's Parson in its high seriousness is built up around it; and wherever we find the seven sins we are certain to find, frequently at unpredictable places, some reference to the sin of wrath, the second *i* in *saligia*.<sup>7</sup> In the widely-used manual for confessors completed in 1234 by Raymund de Pennaforte in answer to the demand caused by the new ruling regarding auricular confession by the Fourth Lateran Council, the *Summa ordinis praedicatorum*, which in some form influenced the section on penitence in the Parson's sermon, the discourse *De Poenitentiis* classifies, "De ira pullulant ista sex,

und Voraussetzungen der Todsünde (Breslau, 1903), and Otto Zöckler, *Die Tugendlehre des Christentums* (Gutersloh, 1904), pp. 238-281.

<sup>6</sup> Dan Michel's *Agenbite of Inurye, or, Remorse of Conscience*, ed. Richard Morris (London, 1866) (E. E. T. S.), pp. 57 ff.; for blasphemy, see pp. 69 f.

<sup>7</sup> The Parson's remarks *De Ira* will be found in sections 535-675 in his "tale," pp. 290-296 in the *Complete Works*, ed. F. N. Robinson (Cambridge [Mass.], [1933]).

rixae, tumor mentis, contumeliae, clamor, indignatio, blasphemiae."<sup>8</sup> Of these—and if one will turn to the texts given at the beginning of Chapter I, above, the application of these six "twigs" will be at once obvious—*rixa* is the most important for our purpose, although it is interesting to note in passing that *blasphemia* is classified with it, a fact which gives some meaning to ducking the scold in England, the blasphemer in Italy and the Low Countries.

Now *rixa* is a word of vigorous meaning throughout. "Scolding," in the modern sense, will not do to render it. It means the raising of bitter strife, of contention coming actually to blows; it means the same as "inciting to riot" except that only two people need be concerned." *Rixa* is the root of the difficulty in the worst of the *tria damnata*, "the three damned things in the house" mentioned by Chaucer's Parson, a proverb of wide popularity which lists a leaking roof, a smoking chimney, and a railing wife.<sup>10</sup> The nineteenth verse of the twenty-first chapter of Proverbs reads, "It is better to dwell in a desert land, than with a contentious and fretful [angry] woman";

<sup>8</sup> Kate O. Petersen, *The Sources of the Parson's Tale* (Cambridge [Mass.], 1901) (Radcliffe College Monographs No. 12). The passage from Raynulfus is in the *Summa*, lib. III, cap. xxiv, § 4. For similar passages in confessional literature, see Georg Dahm, *Das Strafrecht Italiens im ausgehenden Mittelalter* (Berlin and Leipzig, 1931) (Beiträge zur Geschichte der deutschen Strafrechtspflege III), p. 406n. The whole section on blasphemy (pp. 403-407) is illuminating. St. Thomas Aquinas (*Summa theologiae* III, ii, Q. CLVIII § 7) does not agree that these six are fittingly assigned to wrath; but he is so tentative and so anxiously prolix about the proper classification that his pronouncement had little effect on makers of later lists. Several Middle English treatises on the sins have been analyzed by John Livingston Lowes in "Chaucer and the Seven Deadly Sins," *Publications of the Modern Language Association*, XXX (1915), 237-371, esp. 243-258; see further John Edwin Wells, *Manual of the Writings in Middle English* (New Haven, 1916), chap. vi, Nos. 11, 12; chap. xii, No. 18; chap. xvi and the Supplements.

<sup>9</sup> Forellini, *Totalis latinitatis lexicon*, ed. De Witt (1871) s.v. Cf. Georg Dahm as above, pp. 361-365 (he calls it "Der sozialgefährliche Streit") and Franciscus Zilectus, *Tractatus universi juris* (Venetiae, 1586), Vol. XI, pars i, fo. 14, fo. 436, and *passim* (see index, s.v. *rixa*). I have not seen J. L. Brödtmann, *De homicidio rixoso seu in rixa commissa* (Altenburg, 1710), but the title suggests the meaning of the word; see the Parson's Tale again.

<sup>10</sup> Archer Taylor, "Sunt tria damnata domus," *Hessische Blätter für Volkskunde*, XXIV (1925), 139-146, and *Index to the Proverb* (Helsinki, 1934), p. 64 (Folklore Fellows Communications CXIII). The proverb is echoed by Richard Brathwait in *Essays upon the Five Senses . . .* (London, 1620), pp. 134-142.

but "fretful and contentious" or "angry" serve but ill to convey the force in the phrase of the Vulgate which these are intended to translate, "cum muliere rixosa et iracunda," that is, with a woman wrath-laden, provoking to strife.<sup>11</sup> This point is emphasized in the *Speculum morale* associated with Vincent of Beauvais. *Rixa* is the tenth branch of Wrath; it is as it were a private war between individuals, willed not by public authority but by overweening desire for strife even to blows. Thus it involves sin—depending upon the circumstances, even deadly sin.<sup>12</sup> The word *scold* in this powerful sense of *rixa* is now gone from our language, but in earlier times it was an adequate gloss for *rixa*, and it was in this sense that it was applied to scolding women.<sup>13</sup>

Evidence that the real menace of the scolding tongue was much in the minds of the men of the waning Middle Ages and rising Renaissance is widely scattered but abundantly convincing. We are less interested in the treatment of the idea on the Continent than in its vogue in England, less interested in the idea in classical times than in the later Middle Ages and Renaissance, and, omitting therefore such worthies as Plutarch and Seneca, we may note in passing a few writers of these later times. Turning again to the *Speculum morale*, we find Distinctio iii of Lib. III, Pars V, *De custodia linguae*, devoted exclusively to the subject.<sup>14</sup> Alexander of Hales, who

<sup>11</sup> Cf. Proverbs 19:13, 21:9, 25:24, 27:15.

<sup>12</sup> Lib. III. Dist. xii. Pars V. I use the edition in Vol. III of Vincent's *Bibliotheca mundi* (Douay, 1624), col. 1194, because it is more accessible than the other edition.

<sup>13</sup> *Oxford Dictionary*, s.v. *scold*; cf. *shrew*, *shrewish*.

<sup>14</sup> In view of the wide use of Vincent's great encyclopaedia, with which was included this work not by him, it will be pertinent to quote a paragraph from the five and a half columns of this extended discussion. Note that for several centuries after 1250 this standard work was accessible to virtually everybody who could read. This paragraph appears in col. 866 of the third volume of the edition of Douay, 1624:

Nota quatuor in verbis istis consideranda, & memoriter commendanda. *Primo*, quia lingua lubrica est, & in lubrico constituta. Ideo in vita multa per linguam incidimus faciliter & frequenter; propriea maior & diligentior sollicitudo requiritur circa custodiam eius. Ideo dicit: *Attende scilicet propter linguas lubricitatem*. *Secondo*, quod aduersarij nostri multum infestant nos de peccatis lingue; quia vbi castrum debilis inuenitur, ibi fortius impugnatur. Vnde frequentius tentamus de peccato linguae, quam de aliis; propter quod, vitium lingue vigilantius est caendum;

died in 1245, devoted a chapter of his *Destructorium viciorum* to the sins of the tongue.<sup>15</sup> Another summist of the thirteenth century whose discussion of the sins of the tongue became very widely known to literate men of the Middle Ages and Renaissance is William of Peyraud in the Ardennes, suffragan Bishop of Lyons, who died in 1260. Of his *Summarum summae virtutum et viciorum*, the Bibliothèque Nationale alone has more than a score of manuscripts, and twenty editions printed between 1473 and 1668 are preserved there and at the British Museum. The *Summa viciorum* is divided into nine chapters, the first eight being on the sins as usually understood, the ninth being *De peccato lingue: qui dividitur in tres partes.*

Pars prima est de ordine dicendorum . . .

Pars secunda est de xxiiij peccatis lingue.

Pars tertia est de octo remedijs contra peccatum lingue.

Of the twenty-four chapters of Part II, I list several to show what divisions are discussed:

1. De blasphemia	11. De peccato derisionis
2. De murmure	12. De peccato praui consilij
4. De periurio	13. De peccato eorum qui semi-
5. De mendacio	nant discordias
6. De detractione	15. De peccato eorum qui ru-
7. De adulacione	mores amant
8. De peccato maledictionis	16. De secretorum reuelatione <sup>16</sup>
10. De peccato contentionis	

quia vbi magis insistit robur obscientium, ibi vigilans est & fortius obseruantur. *Tertio* propter facilitatem lapsus, & difficultatem resurgendi; ideo dicit, & *sit easus tuus insanabilis*. *Quarto* propter peccatorum linguae gravitatem, quia scilicet sunt *ad mortem*. Attende ergo, quod in peccata linguae faciliter labitmur & frequenter, & ad hoc fortius impugnamur, & cum majori difficultate resurgimus, ac per hoc in mortem primum & secundam incidimus, id est in mortem culpae, quae est mors prima; & in mortem gehennae, quae est mors secunda. *Item* per linguam corruunt homines, & in mortem propriam, & in mortes multorum, sicut infra patebit." On the classical background, see Johannes Geffcken, *Kynika und Verwandtes* (Heidelberg, 1909), pp. 45-53.

<sup>15</sup> Of the many editions of this Englishman's work, I use that of Jean Petit (Paris, 1521), Pars V, cap. xxi.

<sup>16</sup> I use the edition of [Lyons?] 1500 printed by Nicolaus de Benedictis. Usually the author's name appears on the title page as *Guilielmus Peraldus*. BN calls him

I suspect that this chapter is the inspiration for *Venticuatro discursos sobre los pecados da la lengua*, by Luis de Torres, written toward the end of the sixteenth century in Spain.<sup>17</sup> To these glimpses of a tradition solidly founded in St. Augustine may be added, as evidence of its vigorous life during the Renaissance itself, such works as those by Domenico Cavalca under the titles *Tractata contra il Peccato della Lingua*, *Frutti della Lingua*, and so on. Erasmus did not consider the subject beneath his attention, the *Libellus de lingua ejusdemque virtutibus ac vitiis* extending to nearly two hundred and fifty pages and appearing at least a half-score of times between 1523 and 1649, with translations into Spanish, German, and Dutch by the middle of the sixteenth century. The last of the great summists, Silvestro Mazzolini da Prierio, did not neglect the subject; and since most of the ideas of much importance in the later Renaissance were set forth symbolically in books of emblems, it is only natural that the Jesuit Jeremias Drexel, some of whose works were well known in England, should have written the *Orbis Phaëthon, hoc est de universis vitiis linguae*, an exhaustive catalogue in alphabetical order, exemplum-wise, which was printed at Munich in four editions between 1629 and 1637.<sup>18</sup>

Guillaume Péault. That his work was known in England is established by J. Loserth's "Johann von Wicht und Gulielmus Peraldus," *Sitzungsberichte der K. Akad. der Wissenschaften in Wien*, Phil.-hist. Kl., Bd. CLXXX, Abh. 3, 1916.

<sup>17</sup> Burgos, Philipe de Junta, 1590. This is a quarto volume of more than 500 pages, a considerable expansion of the twenty double-column folios devoted to the matter in the 1500 edition of Peraldus. Writers in Latin call Luis de Torres "Aloysius de Torres." According to Antonio Palau y Dulce's *Manual del librero Hispano-American*o, VII (Barcelona, 1927), 54, Luis's work went into a second edition at Barcelona in 1607, and was translated into Latin and Italian by Ercole Bentivoglio (Roma, 1592).

<sup>18</sup> St. Augustine, In Psalmum CXL exhortatio, in Migne, P.L. XXXVI. 1815; cf. also In Psalmum XXXVIII, *ibid.*, 414, and De natura et gratia ad Timasium et Jacobum, cap. xv, art. 17, in Migne, P.L. XLIV. 254.

For editions of Cavalca's works before 1500, see the *Gesamtkatalog der Wiegendrucke*. I used the *Summa summarum . . .* of Silvestro in the edition of Lyons, 1533, Part II, fo. ccxlvii. Emblems of the tongue are set forth by Antonius a Burgundia in *Linguae vitiæ et remedia, emblematicè expressa* (Antwerp, 1631 and 1632). I have not seen the edition of 1629 of the *Orbis Phaëthon*, but have seen those of 1630, 1636, and 1637.

It can be proved that several of these works were known in England during the fifteenth and sixteenth centuries, and all of them may have been known there. What did Englishmen build on these foundations?

Somewhat lamely, but with appropriate vigor, *The Example of Euyll Tongues*, printed by de Worde perhaps about 1500, inveighs in verse:

The tongue is instrument of lycs treason & treachery  
 And causeth warre morther myschefe w<sup>t</sup>out ende  
 Grete multitude of other with ypcrys  
 Rebellions thefte dyscorde full yll to defende  
 Fyghtynge chydyng to stryfe euer Intende  
 With shame & sclauder to yll fortune all ledes  
 Lo how y<sup>e</sup> tongue caused myschefe & dystroyed good dedes.

\* \* \* \*

Speke of salpeter arsnek or ony poyson mortall  
 The fyre of hell the blood of serpentes venymous  
 Ye fynde none sone so peryllous amoneg all  
 As is the yll tongue to them that be vertuous  
 They be of malyce so full and rygorous  
 For they y<sup>t</sup> lyste to do well & thereto do theyr Payne  
 By the euyll tongue all is ouerthrowe agayne.<sup>19</sup>

A century later, after the Sermon of Contention in the Book of Homilies had been ringing in the ears of Englishmen up and down the land for two generations, a play called *Lingua, or the Combat of the Tongue and the Five Senses for Superiority*, now attributed to Thomas Tomkis, began its

For editions of Erasmus's *Libellus*, see the *Bibliotheca Erasmiana* and the catalogue of the British Museum.

These works I have not seen: *Ein Tractat von der Zung des Menschen, deren rechten Gebrauch und Misbrauch, durch einen Philologum gestellt* (Herborn, 1608); *Henrici Springli Zungen Leitter, das ist, ein edler und herzlicher underricht, wie man die Zung zu Gottes Ehre und dess Nechsten nantz recht gebrauchen solle* (Oppenheim, 1616); *Ioannis Peleciū geistliche Zungen Curi, das ist, heilsame Tractat von der giftigen Zungen des Menschen. Verteutscht durch M. Sebastian Antzenhofer* (Augsburg, 1622); *Christian Thomasius, Dissertation de homicidio linguae* (Hallae, 1699); *Christian Röhrensee, De regimine linguae* (Vitebergae, 1703).

<sup>19</sup> I use the copy at the British Museum, which the *Short Title Catalogue* (No. 10608) says is unique. There are twenty-three seven-line stanzas. The two which I quote appear on fo. [Ai v<sup>o</sup>] and fo. Aiii r<sup>o</sup>.

fifty-year career, during which time six editions were printed, the last in 1657. This purely academic allegorical play had co-rivals in the theater, for Tom Tyler's shrewish wife is named Strife, Shakespeare's play is called *The Taming of the Shrew*, and those two very angry women of Abingdon, Mrs. Goursey and Mrs. Barnes, call each other "harlot" pretty freely in the play, very much like some of the women named in the local records which we have seen in Chapter I.<sup>20</sup>

With learning sacred and profane, classical and humanistic, squarely behind them, the divines of the seventeenth century turned again and again to this theme, devoting essays and sermons, sometimes entire treatises, to it. George Webbe, Bishop of Limerick, writes for two hundred pages on *The Arraignement of an vnruly Tongue. Wherein the Faults of an euill Tongue are opened, the Danger discouered, the Remedies prescribed, for the Taming of a Bad Tongue, the Right Ordering of the Tongue, and the Pacifying of a Troubled Minde against the Wrongs of an Euill Tongue . . .* (London, 1619). No matter could be more serious.

<sup>20</sup> For editions of *Lingua*, see the *Short Title Catalogue*, Nos. 24104-24108. The edition of 1657 is at the British Museum. For references to reprints, see E. K. Chambers, *The Elizabethan Stage* (1923), III, 497 f. *Tom Tyler and his Wife* (1661; 1563?) has been edited by F. E. Schelling, *Pub. Mod. Lang. Assn.*, XV (1900), 253 ff.; cf. Chambers, IV, 50. Henry Porter's *The Two Angry Women of Abingdon* (1599) has been edited by Charles M. Gayley in *Representative English Comedies* (1903), I, 538 ff.; cf. Chambers, II, 467. For disturbers of like nature in ballads, see *The Roxburghe Ballads*, ed. J. Woodfall Ebsworth (Hertford [Ballad Society]), II (1874), 367 ff.; III (1879), 508 ff.; VII (1893), 191 ff.; and the ballad which appears in the original Roxburghe collection at the British Museum (I, 512) entitled

Keep a good tongue in your head: for  
Here's a good woman in every respect,  
But only her tongue breeds all the defect.

It is in black letter, is by M. P. [Martin Parker?], was printed by T. Lambert [in 1640?], and has the high moral ending deemed essential; in this last of ten thirteen-line stanzas:

I none do disparage  
To hinder their marriage,  
but wish both old and yong  
Great heed to take  
When choice they make  
For vertues sake,  
No venomous Snake  
stings like a Woman's tongue.

Less stirring is *A Direction for the Government of the Tongue according to Gods Word*, a book of over a hundred pages, by William Perkins; but we find deeply moving prose in Thomas Adams's sermon *The Taming of the Tongue*, prose which at times would do honor to the greatest masters of the age:

The tongue is little. So little, that it will scarce give a Kite her breakfast, yet it can discourse of the Sunne and Starres, of Orbes and Elements, of Angells and Deuills, of Nature and Artes: and hath no straier limites, then the whole world to walke through. . . . It is a little leake that drowneth a shippe, a little breach that looseth an army, a little spring that powres foorth an Ocean. . . . Man hath no bridle, no cage of brasse, nor barres of yron to *tame* it. . . .

To the whole world, if the vastate ruines of ancient monuments, if the depopulation of Countries, if the consuming fires of contention, if the land manured with blood, had a tongue to speake; they would all accuse the *Tongue* for the originall cause of their woe. Slaughter is a lampe, and bloud the oyle; and this is set on fire by the tongue. . . . Swearer, railers, scoldes haue hell-fire in their tongues. . . .

At the last, after its turbulent career here below, the tongue will come to its future reward:

For a former tune of sinne, it hath a present tone of woe. It scalded, and is scalded: as it cast broad the flames of hell in this world, so all the flames of hell shall be cast on it in the world to come. It hath fired, and shall be fired, with such fire as is not to be quenched.<sup>21</sup>

John Abernethy, Bishop of Cathnes, published in 1622 a collection of sermons entitled *A Christian and Heavenly Treatise. Containing Physicke for the Soule: very necessary for all that would inioy true soundnesse of minde, and Peace of Conscience*. The sermon on *The Poysonous Tongue* has many a fine figure of speech. The tongue, full of deadly

<sup>21</sup> Perkins's book was published at London in 1621. *The Workes of Tho: Adams . . .* (London, 1629), pp. 143-154. I quote from pp. 146, 151, 152, 154. The sermon appears also in Part III of Adams's *The Sacrifice of Thankfulnesse* (London, 1616), and is reprinted in Vol. III of *The Works of Thomas Adams*, with Memoir by Joseph Angus (Edinburgh, 1861-62) (James Nichols's Series of Standard Divines, Puritan Period).

poison, "is both in it selfe poysoned, and a poysoner of others. It is both passiue, and active: it is inflamed, and inflameth others. . . ." Not content with his own figures—"It is one of the least members, most moueable, and least tyred: whereby man naturally runneth out in language the image of his life"—Bishop Abernethy studs his writing with quotations from the Scriptures.

This poisoned tongue greatly harmeth the owner thereof; for hee that bridleth not his tongue, deceueth himselfe, and his religion is vaine, Iam. 1.26. The talke of his lippes tendeth onely to pouerty, Pro. 14.23. And hee that hurteth his neighbour by his tongue, woundeth his owne soule by his words, Pro. 18.7. And justly were sklanderers in old time marked in the fore-head, with a hot yron, as infamous: And scoffers deserue the reward of disdaine. . . . For the rage of the tongue, the prater shall be brought to derision, Hos. 7.16. The fooles mouth is neere destruction, Pro. 10.14. and he that openeth wide his lippes, shall haue destruction, Prou. 13.3. His owne tongue shall fall vpon him, Psal. 64.8.<sup>22</sup>

Of his *XXV Sermons preached at Golden-Grove*, Jeremy Taylor devoted four to the dangers of the tongue. I quote but one period.

A false tongue or a foul lye against a mans reputation, is like a poysoned arrow, it makes the wound deadly, and every scratch to be incurable. *Promptissima vindicta contumelia*, said one, To reproach and rail is a revenge that every girl can take. But falsely to accuse is spiteful as Hel, and deadly as the blood of Dragons. . . . This was it that broke *Ephraim* in judgement, and executed the fierce anger of the Lord upon him. . . . This was it that humbled *Joseph* in fetters. . . . This was it that slew *Abimelech*, and endanger'd *David*. . . . By this *Siba* cut off the legs of *Mephibosheth*, and made his reputation lame for ever; it thrust *Jeremy* into the dungeon, and carryed *Susanna* to her stake, and *our Lord* to his Crosse; and therefore against the dangers of a slandering tongue, all laws have so cautelously arm'd themselves, that besides the severest prohibitions of God often recorded in both Testaments, God hath chosen it to be one

<sup>22</sup> This edition of 1611 is "Newly corrected and enlarged by the Author," and was printed by Felix Kyngston. *The Poysonous Tongue* is chap. xxxii. I quote from pp. 464 and 475. I have not seen the editions of 1615 and 1630.

of his appellatives to be the defender of them, a party for those, whose innocency and defencelesse state makes them most apt to be undone by this evill spirit. . . .<sup>23</sup>

*Rules for the Government of the Tongue*, by Edward Reyner, a volume of all but four hundred pages, was printed three times between 1656 and 1658 with the *imprimatur* of that hot fighter Edmund Calamy. It is tremendously learned and tremendously sincere. Its sincerity is demonstrated by the variation of the "go little book" theme in the preface:

The Lord accompany this Book with his Presence and Power, that it may bee effectuall to tame that unruly Member thy Tongue, and to make thee a good Linguist in the School of Christ.<sup>24</sup>

We pass over John Ball's relatively uninteresting sermon *Of the Government of the Tongue* to pause for a moment with William Gearing's *A Bridle for the Tongue; or, A Treatise of ten Sins of the Tongue. Viz. Cursing, Swearing, Slander, Scoffing, Filthy-speaking, Flattery, Censuring, Murmuring, Lying and Boasting*.<sup>25</sup> This elaborate and exhaustive discussion, dedicated to Sir Orlando Bridgman, Chief Justice of the Court of Common Pleas, carries on for more than four hundred and fifty pages, with elaborate Biblical and other authorities, the examination of the doctrines underlying these sins of the tongue and how they can be combatted. The fashion is obviously medieval, with divisions and subdivisions corresponding to the branches and twigs of medieval treatises on the seven sins. One illustration must suffice from a multitude. People who scold are those whom

<sup>23</sup> London, 1653 (Part I of *Evangelos. A Course of Sermons . . .*). Sermon XXIV, Of Slander and Flattery, p. 315. The others are XXII, XXIII, XXV, altogether pp. 286-334.

<sup>24</sup> I use the first edition of 1656. The third appeared in 1658.

<sup>25</sup> London, printed by R. H. for Tho<sup>o</sup>. Purkurst . . . , 1663. John Ball's sermon is in his collection entitled *The Power of Godliness* (London, 1657), Bk. IV, Pt. II, pp. 309-333. I pass over also the anonymous *Anatomy of a Woman's Tongue* (1638), reprinted in the *Harleian Miscellany*, II (1809), 183-193. A somewhat similar tract is *Poor Robin's True Character of a Schold or, The Shrews Looking-Glass* (London, printed for L. C., 1678).

the Lord smites, smashing their jawbones and breaking out their teeth.<sup>26</sup>

Richard Ward brings into the fray his impressive theological learning in *The Nature, Use and Abuse of the Tongue*, for the motto of which he goes to Gregory's *Moralia on the Book of Job*, that great work of which it can be said that no other save the Bible itself has been more widely read and revered and thought on.

Quem Lingua restringitur, nequaquam ubi ceciderit, jaceat, sed semper ad deteriora descendat.

It is the usual refrain. Once you begin to abuse your tongue, steadily worse things are in store for you.<sup>27</sup>

In the Preface to *The Government of the Tongue* we are told that

The Government of the Tongue has ever bin justly reputed one of the most important parts of human Regiment. The Philosopher and the Divine equally attest this: and Solomon (who was both) gives his suffrage also; the perswasions to, and encomiums of it, taking up a considerable part of his book of Proverbs.

The tongue at best is difficult to control, the Preface goes on, but in this age men have grown especially careless. Later the source of the trouble is pointed out:

Original sin came first out at the mouth by speaking, before it entred in by eating. The first use we find *Eve* to have made of her language, was to enter parly with the temter, and from that to become a temter to her husband. And immediately upon the fall, guilty *Adam* frames his tongue to a frivolous excuse, which was much less

<sup>26</sup> The authority is the seventh verse of the Third Psalm. Thus Gearing justifies the scolds' bridle or the branks, a punishment for scolds described by Brushfield and Andrews. For use of a similar instrument in Spain under the Inquisition, see Henry Charles Lea, *History of the Inquisition in Spain*, III, 139. Bridling the tongue thus came to be a real thing in England. The origin is to be sought in interpretations of scriptural authority. See the *Oxford Dictionary*, s.v. branks. It will have been noted that other divines quoted here allude to the bridling of the tongue. See Psalms 29:1; 2 Kings 19:28; Isaiah 30:28, 37:29; James 1, 26, III, 2 ff.

<sup>27</sup> Richard Ward, *Two very usefull and compendious theological Treatises: . . . the Second describing the Nature [etc.]* (London, 1673), pp. 149-239. For the passage from Gregory, see Migne's P.L. LXXV, 1122, on Job 22:5.

able to cover his sin than the fig-leaves were his nakedness. And as in the infancy of the first world, the tongue had licked up the venom of the old serpent, so neither could the Deluge wash it off in the second.<sup>28</sup>

Thomas Watson's sermon *On the Government of the Tongue* rings the changes on the old theme.

The Tongue, though it be a little Member, yet it hath a World of Sin in it. The Tongue is an unruly Evil. We put *Bitts* in Horses Mouths and rule them; but the Tongue is an unbridled Thing. It is hard to find a Curb-ing-bitt to rule the Tongue.<sup>29</sup>

We are quite ready now to agree with Edward West that "the particular evils of the Tongue are not to be reckoned up in a single sermon," and we may be sure that our ancestors of the sixteenth and seventeenth centuries learned this same fact through many a long Sunday and many a family service, learned it so thoroughly that it became an integral part of their processes of thought ready for immediate use at any time, and provided religious authority for the punishment of scolds.<sup>30</sup>

Our reverend gentlemen felt not gently disposed to these sinners; and if we regard the whole theory of the seven sins and the ideas behind that theory, such as the verses from St. James quoted at the beginning of this chapter, or the sixteenth verse of the fifth chapter of the First Epistle of St. John, we must recognize that the commission of any sin may by repe-

<sup>28</sup> *The Government of the Tongue*. By the Author of *The Whole Duty of Man, &c.* (second impression, Oxford, 1674). The sixth impression was published at Oxford in 1713. For the dilemma as to authorship see Lowndes. The British Museum catalogue says that this work has been attributed to Richard Allestree, to R. Sterne (Bishop of York), and to Lady Pakington. Therefore (apparently) an enraged cataloguer has listed it under *Government*.

<sup>29</sup> Thomas Watson, *A Body of Practical Divinity, consisting of above one Hundred Seventy Six Sermons, Recommended by several Ministers to masters of Families and others* (London, 1692). *On the Government of the Tongue* is at pp. 986-994.

<sup>30</sup> Edward West's sermon is numbered XX in *A Supplement to the Morning-Exercise at Cripplegate*, ed. Samuel Annesley (2d ed., London, 1676), pp. 503-526; the quotation is from p. 515. See also Mr. Poole's sermon, numbered XXI, "How may Detraction be best prevented, or cur'd?"

This by no means exhausts the subject, but enough are gathered together here to establish my point. I have not seen Stephen Ford's *The Evil Tongue Condemned; or, the Heinousness of Defaming and Backbiting* (London, 1672).

tition so weaken the character that other sins will follow, and gradually the spirit will become so completely turned from God that the sins will suffer the awful change from venial to deadly, the sinner will thus come to despise God and he will become irrevocably lost and damned, hardened past all repentance. From this point of view it is easy to understand why the seven sins, their classifications and sub-classifications, never crystallized into any fixed order. The significant thing about them is not so much their order in an absolute sense as the state of mind, the intention, of the individual who commits one. This accounts for the flexibility of treatment of St. Thomas Aquinas. The number of sins which are in themselves deadly approaches nil; the number of venial sins which on the other hand *may become* deadly through the intention of the doer, is very nearly all. This, too, as usual, St. Thomas makes perfectly clear. It is not easy for the English-speaking person to understand, because he has grown used to the invariable expression, "the Seven Deadly Sins," an expression which is likely to convey the impression that the moment an individual fell into one of the "saligia" or their filthy twigs, that moment he was irrevocably lost.<sup>31</sup> If this were indeed the case, the woman who had by repeated scolding (in its strongest, now obsolete sense) ruthlessly stamped on most of the twigs of Wrath would simply have been killed, as being a lost soul better out of contact with souls still savable. As we have seen, she was not executed, however—it is true that her ducking may have been a symbol of an earlier punishment by drowning, though hardly for scolding—she was not executed, but punished, in the hope that her sin would be checked before it had developed past all control.

<sup>31</sup> The whole matter is no simpler than the general concept of sin, which nowadays is called crime. In the *Speculum Morale* (Vol. III, ed. of Douai, 1624) long thought to be by Vincent of Beauvais, for instance, scolding or its counterpart turns up repeatedly; e.g., Discord is treated under Pride (Lib. III, Dist. xii, Pars III), as are Contention (*ibid.*, Dist. xiii) and Scandal (Dist. xvii). Detraction (Dist. iii of Pars IV) is a branch of Envy, as is Derision (Dist. iv). Contumely, Cursing, and Blasphemy are branches of Wrath (Dist. iv, v, vi ff. of Pars V). All of these, obviously, can be, and were, regarded as sins of the tongue, and it is thus easy to see how ubiquitous those sins are, lying everywhere in wait for the unwary children of Adam.

We can now see why scolding could be regarded as an "enormious offence"; it was thought by some to be but slightly removed from the abhorrent crime of blasphemy, for which the earlier punishment in the Middle Ages was death.<sup>32</sup>

The legal profession was careful to keep in the foreground the seriousness of scolding. In his manual for holding courts leet, John Kitchin gives the proper form to use when drawing up charges against scolds; the date of the manual, 1579, probably holds good for England in general for the next two centuries, and perhaps for the half-century before.

Item present quod N. C. vidua, est communis objurgatrix cum vicinis suis. Et communis fractrix sepium. . . .<sup>33</sup>

Frequently manuals, legal literature, show a discrepancy with actual living law; but already we have many examples to prove that such is not the case here. What really happened is exemplified also by an entry in the records of the Quarter Sessions of the North Riding at Thirsk, in April, 1618:

A man and his wife presented as common scolds . . . [They have been] malitious and unquiett towards most of their neighbours, and especially to Ralph Richardson, Constable, . . . , insomuch that he cannott goe about his business quietlie, nor yet about his Maties affaires.

William Sheppard sums up the legal standing of the scold in the seventeenth century thus:

A Scold in a legal sense is a troublesome and angry woman, who by her brawling and wrangling amongst her Neighbours, doth break the publick Peace, and beget, cherish and increase publick Discord. And for this she is to be presented and punished in a Leet, by being put in the Cucking or Ducking-stole, or Tumbrel, an Engine appointed for that purpose, which is in the fashion of a Chair; and herein she is to sit, and to be let down in the water over head and ears three or four times, so that no part of her be above the water,

<sup>32</sup> St. Thomas Aquinas, *Summa theologiae*, II, i. Q. 73 § 3; II, ii. Q. 13 § 3; cf. Ducange (1883), s.v. *blasphemare*.

<sup>33</sup> *Le Court Leete* (London, 1579), fa. 55.

diving or ducking down, though against her will, as Ducks do under the water.<sup>34</sup>

Punishing scolds was not, then, the semihumorous hazing which it sometimes seems to be, nor on the other hand was it but an English invention. Even in England, other punishments were known. Lord Coke, as we have seen, recommended that fines be used rather than humiliating punishments, and they were frequently used for centuries, notably at Nottingham, where the records are clear for more than two centuries, beginning in 1396.<sup>35</sup> The skeptical might still feel that there was something unique about punishing scolds in England if he were not told that the offense was regarded as a serious crime in the Germanic countries also, where a humiliating punishment by exhibition was employed which differed markedly from that employed in England. Since it takes two to make a quarrel, the female partners in crime were forced to carry heavy stones or other objects over a prescribed distance—around a church, say, from one gate of the town to another, and so on, of course on a market day. The women took turns in carrying the load, proceeding in single file, the one at the rear urging on the one in front by prodding her with a needle attached to a rod.<sup>36</sup> The same punishment was inflicted in

<sup>34</sup> *Quarter Sessions of the North Riding*, ed. J. C. Atkinson, II (1884), 168. William Sheppard (some librarians catalogue him as Shepheard), *A Grand Abridgment of the Common and Statute Law of England* (London, 1675), s.v. scold.

<sup>35</sup> It is probable that fines were more prevalent than ducking, as has been noted above. *Records of the Borough of Nottingham*, I (1882), 294, 305, 309; II (1883), 48, 106, 240, 268, 270, 339; IV (1889), 253; cf. pp. 92, 111. Here the scold is usually called *communis litigatrix*, and she is fined because she scolded—*litigavit*. Under "Skolde" the *Promptorium Puvulorum* (1440) has "chyder. Continxix. Litigatrix." Other instances of fining for offenses of this type are in Anthony Fitzherbert and R. Crompton, *Loffice et auuthoritie de Justices de peace* (London, 1584), pp. 65, 208 f., 212; *Records of some Salford Portmoots in the Sixteenth Century*, ed. James Tait (Manchester, 1921), pp. 8, 9, 10, and see index (Chetham Society, LXXX); *Yorkshire Archaeological Society Record Series*, Vol. LXXIV for 1929, p. 37. To this very day, scolds are punishable in England "by fine and imprisonment, or by being placed in a certain engine of correction [etc.]," says the standard treatise by Sir William Oldnall Russell, *On Crime*, II (9th ed., London, 1936), 1326.

<sup>36</sup> Eberhard Freiherr von Kunzberg, *Über die Strafe des Steintragens* (Breslau, 1907) (*Untersuchungen zur deutschen Staats- und Rechtsgeschichte*, Heft 91); the same, *Jahrbuch für historische Volkskunde*, ed. Wilhelm Fraenger, I (Berlin, 1925),

Alsace-Lorraine, in France as far south as Orléans, and in Hungary.<sup>37</sup>

If we approach scolding in England from the historical and comparative point of view, then, rather than from the point of view of the antiquarian of the eighteenth and nineteenth century, we see that in the land where the Book of Homilies carried on for centuries after the Reformation the traditions of medieval preaching based in the lore of the seven sins, in the land where medievalism generally continued in remarkably unbroken continuity until well on into the eighteenth century and after, the punishment of ducking scolding women, which impresses the modern observer at one moment as ludicrous, at the next as outrageous, was by no means unreasonable or inappropriate. It was a serious punishment carried out with the original intention of reforming the guilty woman before her constant scolding had made punishment

102-106; the same, *Rechtssprachgeographie* (Heidelberg, 1926), pp. 42 f. (Sitzungsberichte der Heidelberger Akademie der Wissenschaften, Phil.-hist. Klasse, 1926/27, 1. Abhandl.); the same, *Rechtliche Volkskunde* (Halle/Saale, 1936), pp. 105 ff. (Volk: Grundriss der deutschen Volkskunde in Einzeldarstellungen, III). Jacob Grimm, *Deutsche Rechtsaltertumser*, II (4th ed., 1899), 315 ff., has a section on *steintragen*. Add to these the articles, four and sixteen pages in length respectively, by Louis Darras, "La pierre de honte pour femmes querelleuses," in *Wallonia* for April, 1912, pp. 162-166, who publishes a fourteenth-century charter of Moralmé, and by Jules Vandereuse, *Une ancienne coutume judiciaire: le port des pierres pénales* (Charleroi, E. Theys, 1924), who discusses instances in Flanders, Hainault, and Luxembourg from the thirteenth to the eighteenth century. For other Germanic scolds, see Grimm as above, II, 238 f., and the *Reallexikon der germanischen Altertumskunde* (Strassburg, 1911-13), I, 516 ff.

<sup>37</sup> Camille Enlart, *Manuel d'archéologie française . . .*, III (Paris, 1916), 441 f. This account is based on the same writer's article in *Mémoires de la Soc. des Antiquaires de France*, LXVI (1907), 47-55; at p. 53 M. Enlart quotes the rhyme placed on the wall of the town hall under the stones in question:

Zum Klapperstein bin ich genannt  
Den boeszen Maculern wohl bekannt  
Wer Lust zu Zank und Hader hat  
Der muss mich tragen durch die Stadt.

For other occurrences in France, see Ducange (1883), s.v. *lapidis catenatos ferre*, and *villania*, and *L'intermédiaire des chercheurs . . .*, XXVIII (1893), 535; XXIX (1894), 344; LXIV (1911), 858.

A similar punishment was known in the fifteenth century at Fordwich in Kent. A scolding woman was required to carry a mortar throughout the town and then pay the noise-makers who attracted attention to her. See C. Eveleigh Woodruff, *History of . . . Fordwich . . . Canterbury* (1895), p. 241. Boys's *Sandwich* gives a drawing of such a mortar.

too late, constant scolding which might ruin not only the woman herself but her neighbors, even the whole community. If we grant a few initial premises, the reasoning of the medieval man on this subject is plain and above reproach. At least he knew what he was doing, in terms of those premises; and that is more than we can say in the twentieth century for our punishments, which the criminologist of the twenty-first century will no doubt regard just as unfavorably as we regard the ducking-stool, for he will see the muddle produced by our inability to decide whether our criminals should be punished or reformed, whether society wishes to wreak vengeance upon them or to help them to become good citizens. And he will wonder that in this indecision we continue to sell our fellow man into slavery for terms of from one to ninety-nine years. It is doubtful that he will say of our punishments what we can now say of the punishment of ducking scolding women—it did fit the crime.

*Lex plus laudatur, quando ratione probatur, quoth Littleton.*

## MACHINES AND WORDS

## MECHANICS

SEESAWS, CRANES, BALANCES—such are some of the means of ducking people in water which have been mentioned in the records here set forth. Can they be reconciled one with another? The simple mechanism of the seesaw is familiar to all. As for hoisting-cranes before the application of steam-power to them, they seem to have been of two main types. The sort referred to in the records which we have cited in these pages is probably what might be termed the  $\Gamma$  type, of which the best illustration that I have been able to find is part of a monumental map of Hull in the fifteenth century preserved in MS. Cotton Aug. I, Vol. I, No. 83, at the British Museum. It is easy to see that any object could be hauled up or let down by such cranes. No doubt it was this sort which was used at Southampton "at full sea," meaning, Dr. Gidden tells me, at high tide, the only time when the water was deep enough for ships to approach the dock. The iron ducking-stool at Plymouth is reported to have been used at the Barbican, probably from just such a crane. Any port already equipped with cranes could easily add a ducking-stool to its supply of instruments of punishment simply by attaching a stout chair to the rope of one of these cranes.

A still simpler sort of crane brings us closer to the seesaw and to the balance, and involves the application of the ancient principle of the fulcrum. Place the middle of a long beam or plank across a support from two to three feet high, and you have a seesaw. Make the support six or eight feet high, and you have a simple form of crane, the leverage which it will exert depending of course upon the relative lengths of the two arms. If you keep the two arms of equal length, then you have a piece of apparatus which in its essentials is the most

easily understandable form of weighing-machine, the one with two pans counterpoised the one against the other, the scales familiar to all as those borne by the allegorical figure of Justice. It is the simplest and most sensitive form of scale known, and it is used to this day in the most refined chemical analyses. Hull again supplies us with the earliest representation of a ducking-stool that I know, swung from just such a crane, which we may call the T type.<sup>1</sup> The only other example to which I shall refer here is a woodcut of uncertain date used in the anonymous chapbook *The Old Woman of Ratcliffe Highway*, a crazy performance in which the woodcut and most of the contents have no real place.<sup>2</sup>

There are also two views of the famous heavy-duty cranes at Amsterdam, the one in the monumental map of Cornelis Anthonisz of 1538, the other in an engraving of later date.<sup>3</sup>

Other illustrations I pass over because none is well attested, none is of date early enough to be used in conjunction with the materials which have been collected here, and in the nature of things none can be more than a mere sketch.<sup>4</sup>

<sup>1</sup> Thomas Sheppard calls this "a very fanciful view of Hull from the Humber" in *The Evolution of Kingston-upon-Hull* (Hull, 1911), p. 32. He says the view dates from the fourteenth century. It is reproduced in the frontispiece of T. Tindall Wildridge's *Hull's Honour Roll* (Hull, 1891).

<sup>2</sup> *A Strange and Wonderful Relation of the Old Woman who was drowned at Ratcliffe Highway a Fortnight ago. To which is added The Old Woman's Dream, A Little after her Death* (London [1780?]) Pressmark at British Museum: 1076, 1.3. (13). There are various other editions, none, however, including this woodcut. It is reproduced, with a brief characteristic extract from the chapbook, in John Ashton's *Chap-Books of the Eighteenth Century* (London, 1882), p. 274. Ashton had the woodcut redrawn, no doubt because the original is so badly stained that it would not photograph well. It is reproduced without indication of source in *The Reliquary and Illustrated Archaeologist*, N.S. IX (1903), 245.

<sup>3</sup> For these last I am indebted to the good offices of Mr. Voorthuysen of the Gemeente Archief at Amsterdam, who referred me also to Jan Wagenaar's *Amsterdam in zijn Opkomst . . .* (Amsterdam, 1765), II, 67 f.

<sup>4</sup> The articles listed in the note on pp. 10-11, above, reproduce many illustrations. A seesaw ducking-stool was sketched by Thomas Barritt (1743-1820) and reproduced by F. A. Bruton, *Short History of Manchester and Salford* (2d ed., Manchester, 1927), p. 105. A single one-piece beam bears at one end a chair. The other end would remain on dry land and would be manipulated by the "executors." Rowlandson's ducking-stool is reproduced by Harold D. Eberlein, *Little Known England* (1930), p. 67. Actual specimens of ducking-stools, still surviving in more or less dilapidated condition can be seen at these places: Plymouth, The Athenaeum, and the Public Museum; the former seems to have the better claim to

Now, as we have seen, the ducking-stool, or whatever name was applied to the chair in which people were ducked, was constantly getting out of order and constantly having to be repaired. Whether used merely for exhibition, or for exhibition and ducking, the chair was always operated in the open air. We are not told precisely what part of the chair was most fragile, but we do not need to be told that anything made of wood deteriorates rapidly when exposed to sun and rain. The ducking-chair, under its routine of constant soakings and dryings, would naturally come apart readily enough at the joints, but most vulnerable would be the seat, a slab of wood exposed flat side up. Unless it were of extraordinary thickness, its life could not be longer than a few seasons, and if it were made thick enough to endure for any length of time, then the whole chair would have to be made very heavy to carry it, the crane or other framework would have to be made proportionately stronger, and the whole thing would become ponderously unwieldy. The carpenter whose task it was to construct the thing at once light enough for easy use and heavy enough to wear without the constant expense of repairs had a difficult job on his hands. Nowadays, park-benches have seats made not of solid wood but of slats. Certainly, one part of the chair which gave the carpenter food for thought was the seat. Of the reproductions of sketches given by Brushfield, several show

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genuineness. Both are made of iron—the only ones in England known to have been made of this eminently practical material. Bristol Castle: *Trans. Bristol and Gloucs. Arch. Soc.*, III (1879), 186; cf. XXVII (1904), 43. Leominster: Townsend's *History of Leominster*, as above; *N. & Q.*, Ser. IV, IV (1869), 205, and Ser. IX, II (1904), 43. St. Mary's Church, Warwick: *Trans. Bristol and Gloucs. Arch. Soc.*, XXXVII (1914), 31. Leicester: *N. & Q.*, Ser. I, VII (1853), 260. Scarborough: same, p. 315. Ipswich: *N. & Q.*, Ser. V, XI (1879), 399. Wooton Bassett: *ibid.*; *Wilt. Arch. and Nat. Hist. Magazine*, XXXVII (1911-1912), 457, and *Notes on the Town Hall and the Relics and Portraits contained therein*. I. *The Corporation Tye Engine and the Ducking Stool*, by E. H. Goddard (Devizes, 1914). Fordwich, Kent: *N. & Q.*, Ser. VIII, VIII (1895), 349. Hackney: *N. & Q.*, Ser. VIII, IX (1896), 57. Hall i' the Wood, near Bolton, near Liverpool: M. V. Hughes, *America's England* (1930), pp. 90, 230. In the journal of the *Bath Field Club and Natural History Soc.*, IX (1901), 280-291, Thomas S. Bush gives a photograph of a ducking-stool in his possession, of unknown provenience, and adds sketches of three others, including the one from the *chapbook*, lent him by William Andrews.

that the seats were made of bars of wood, not of solid blocks, although some do show solid pieces. The ducking-stool at Scarborough has bars; that at Ipswich has the bars supported by crosspieces, so that the seat consists of a series of hollow squares. Such a seat would obviously be more durable than a solid one.

It is my guess that considerations of this sort were responsible for the construction of the ducking-stool at Sandwich, Kent, as it appears in the illustration in Boys's *Sandwich* already referred to. If we glance at the illustration, we are at once struck by the resemblance of the stool to a privy chair. We have no definite information as to how this specific chair was used. As it stands, it seems to lend weight to the hypothesis that the ducking-stool was originally a stool of use. We can prove nothing about this chair at Sandwich by moving across the country to Manchester, but the description of a ducking-stool in use there in 1775 seems to the point.

[It was] an open-bottomed chair of wood, placed upon a long pole (balanced upon a pivot), and suspended over the large collection of water called Pool House.<sup>5</sup>

With his reputation as a competent craftsman at stake because of the repeated collapses of the ducking-stool, the town carpenter would easily hit on the idea of dispensing with the greater part of an offending section, the seat. Whether this kind of thing actually happened we cannot know. Whatever happened, the almost wholly conjectural character of the evidence that the ducking-stool was a stool of use is sufficient to make me thoroughly skeptical about it. Once even the haziest idea about an institution receives the most casual sort of support, at that moment it becomes extremely difficult to prove that the idea is false. I am not able to prove that this idea is false, but a candid examination of all the evidence that I can find leaves me unconvinced that the ducking-stool was a stool of

<sup>5</sup> Edward Baines, *History of the County Palatine . . . of Lancaster*, ed. James Croston, II (1889), 91. Cf. William Andrews, *Punishments in the Olden Time* (London [1881]), p. 32.

use. There is no good reason why in their ingenuity in hitting upon novel ways of punishing the wicked, the later Middle Ages and Renaissance should not have employed exhibition upon a stool of use. One reason may be that men in those days were not so squeamish in these matters as we are. The plain fact as I see it is that there is no adequate evidence that such exhibition was ever used, in England or anywhere else.

We can be sure that a chair was used both for exhibition and for ducking. For the latter, seaports could use cranes already present. Districts inland would have to provide expressly something to take the place of the crane. For the small pond, the simple T-type of crane could be set up in a moment, or the seesaw working on a post permanently set in the water. Other possibilities were the tumbrel-type, especially well adapted to shallow streams, or the trebuchet-type. Both of these last would be satisfactory in districts where it was desired both to exhibit and duck offenders. Probably the tumbrel-type was the scolding-cart occasionally referred to; and the trebuchet was especially well calculated to serve both purposes, since the offender would be suspended in air at a considerable height as she was trundled along the streets. With the sedan-chair in mind, we shall not overlook the probability that exhibition before her door could easily be combined with ducking an offender by picking her up chair and all and carrying her to the nearest body of water. How to differentiate mere exhibition from ducking is still not clear, and the probability is that it never was so differentiated. Ordinances naturally would not prescribe dates, and the punishment, whether by exhibition or by ducking, was usually optional. This latitude for judgment was employed also, I suspect, with regard to seasons. Certainly the law did not sanction bodily injury; in practice, then, the local magistrate was probably expected to use common sense and not sentence a woman to be ducked during the cold winter months. The relatively few instances in which specific punishments are recorded and dated do not permit a hard-and-fast generaliza-

tion, but those few show a spread from April to October and strengthen slightly the theory that correction, not execution, was intended. This of course does not exclude exhibition alone during the summer months, nor does it blink the fact that local variations or variations even within a single village could be very wide.

In the main, however, we now have a fairly clear idea of the functions of seesaws and cranes and balances, of two-wheeled carts and military engines, and turn with some confidence to the knottiest of our problems.<sup>6</sup>

### LINGUISTICS

Before attempting to proceed further in our quest for information about the linguistic background of *cuck-* and its variants, we may wisely pause to consider a factor which is too frequently overlooked. As we look back on the formalizing tendencies of linguistic studies in the nineteenth century, we recognize that without them we should possess today a much less clear and rational grasp of linguistic problems than we actually have. At the same time, the rigid technique employed, although beautiful in its logic, left something to be desired in its application to that very humanly variable phenomenon, language, which has a way of wriggling out of its bonds, no matter how *strengwissenschaftlich* the bonds may have been devised. Linguistic paths are so obscure and so intricately confused that phonetic rules are sometimes of little service; and yet an effort to apply these rules is always advisable because at the most unexpected moment they throw light on dark places. When drawing up his etymological dictionary, the lexicographer is continually confronted by the limitation that merely by virtue of being human he cannot pos-

<sup>6</sup> See *Oxford Dictionary*, s.v. *ciane*; Abbott P. Usher, *History of Mechanical Inventions* (New York, 1929), pp. 71 ff.; Franz M. Feldhaus, *Die Technik der Antike und des Mittelalters* (Wildpark-Potsdam, 1931). It is interesting to note that Hatzfeld-Darmesteter-Thomas give under *grue*, 'crane,' a secondary definition: "sorte de carcan, instrument de punition pour les soldats," and that German soldiers in the early part of the seventeenth century were ducked for insubordination—Theodor Hampe, *Crime and Punishment in Germany as Illustrated by the Nuremberg Malefactors' Book*, trans. Malcolm Letts (London, 1929), p. 80.

sibly know as much as he needs to know. He cannot stop to write a monograph on each word. He cannot master the nuances which he needs to master, nuances dialectal, semasiological, let alone those nuances which can be realized only when the most delicate human relationships have been lived through in one's own person. The lexicographer needs to be the most learned and sympathetic of men. He needs, in short, to emulate one of Plato's magistrates. Now one of those magistrates would not be likely to apply rigorously a method which sought but one origin for a word or for an institution. Here we have one of the senses in which the study of sources has been most abused. It is historically false to assume that because we see but one word or one institution, that word or that institution must have but one source. The point needs no belaboring; the field of English law is itself a mosaic which proves the matter, if proof be needed.

An effort has already been made to classify the variant forms in the table on pages 34-35, above; after the classifications had been made, hypothetical Old English etyma were conjectured, none of which, however, has a single Old English form actually in existence to bolster up our faith in it. Frequency of occurrence in the table being our only criterion, that admittedly being a poor one, the possibilities were drawn up in this order:

- 1 \*cūc-
- 2 \*cāc-
- 3 \*cūc-
- 4 \*cāc-
- or
- \*cōc-
- 5 \*coc-

The absence of any word in Old English bearing resemblance to these conjectural forms may mean that the forms have been inaccurately constructed, that anything similar to a *cucking-stool* was unknown in Anglo-Saxon England, that if present the instrument was known by another name, that—but reason-

ing on the absence of evidence is more likely than not to be a waste of time. The best we can do is to stick to the conjectural forms. We remember the *Oxford Dictionary's* tentative etymon, Icelandic *kúkr*, meaning 'excrement,' mentioned with similar forms on page 18, above; but unless we invoke in support the highly problematical *cathedra stercoris* of Domesday, this *kúkr* has no relationship semasiologically, was never used in the Scandinavian languages to designate an instrument of punishment, and is difficult to accept as a loan-word from the North in Old or Middle English because of the readily available, and actually adopted, form in Latin *cacare*, which has the same meaning and was accepted not only in England, but pretty much all over the Continent as well. Moreover, the presence of forms based on Latin *cacare* does not help us here, for the short *-a-* remained in Old and Middle English, and we do not find variant forms of *cuck-* in our table which will justify a hypothetical O.E. form *\*cac-*, or *\*cæc-*. He who feels convinced that *cathedra stercoris* meant to the scribe of Cheshire Domesday what the *cucking-stool* meant to later folk—at least, to the later folk responsible for the forms in the table of variants—will need to find some explanation why not one form survives which points to the conjectural form *\*cac-stol* as the form responsible for *cathedra stercoris*. If *cathedra stercoris* meant what it seems to mean when we translate the words, it must have been based either upon words of similar meaning in Old English or upon the misunderstanding of the scribe doing the translating.

Failing to find an Old English word that helps explain *cuck-*, we turn to Modern English for a verb *to cuck*, variant *to cook*, meaning 'to toss,' as 'to toss a ball.' John Jamieson was the first to suggest that the verb might have something to do with the *cuck-* in *cucking-stool*.<sup>7</sup> Obviously, the motion of the *cucking-stool* in and out of the water is a tossing motion.

<sup>7</sup> In the Supplement (1825) of his *Etymological Dictionary of the Scottish Language*, s.v. *cockstool*. Cf. *Oxford Dictionary*, s.v. *cuck* v.<sup>4</sup> and the *English Dialect Dictionary*, s.v. *cuck*. Brushfield rejected this possibility, and the *Oxford Dictionary* follows him.

The weightiest arguments against the suggestion are that although it is well established in dialectal usage, the earliest form recorded by the *Oxford Dictionary* is dated 1787, and that we have no cognates for it in the other Germanic languages—at least, no cognates which leap to the eye. There is a very similar word in English of more venerable date and of meaning so close that it must bear some relation to *cuck* in the meaning 'to toss.' This is the noun *chuck* and the verb of identical form, which go back to 1611 and 1583, respectively.<sup>8</sup> The verb is in current use today. It is in fact firmly established in the vocabulary of everyone. The *Oxford Dictionary* suggests no etymon for *to chuck*, but refers us to the French *choquer*, a verb of meaning so different that at first we feel skeptical, especially with the English noun and verb *shock* in mind, although we recognize that a person suffering a shock is likely to shake, shudder, tremble. The earlier history of *cuck* in this meaning 'to toss' and of *chuck* being unknown because of the lack of forms, it is not possible to assume that they are homonyms or doublets; but the near-identity of form, and the virtual identity of meaning in *cuck* 'to toss' and *chuck* 'to throw with the hand with little action of the arm' force the inference that some relationship exists. Friedrich Kluge claims both French *choc* and English *chuck* as loan-words from that Middle High German *schoch* which has already been referred to, *schoch* related to Modern German *schaukel*, 'seesaw,' to Middle Low German *schucke*, and to Old Saxon *skokka* of similar meaning.<sup>9</sup> Whether Kluge is right or wrong in this suggestion, it is striking to find this Continental word for 'seesaw' brought into even conjectural relationship with an English word meaning 'an up-and-down motion,' a prominent characteristic at once of the seesaw and of theucking-stool. It will be recalled that in the passage quoted by Grimm, punishment "of the old *schock*" was used as applied to scolding

<sup>8</sup> *Oxford Dictionary*, s.v. *chuck* sb.<sup>2</sup> and *chuck* v.<sup>2</sup>

<sup>9</sup> *Etymologisches Wörterbuch der deutschen Sprache*, ed. A. Götz (11th ed., 1934), s.v. *schaukel*. The English word printed is *to chok*, which I take to be a misprint (it is actually a rare variant) of *to chuck*. Note the alternation of *u* and *o* in the dialect-forms quoted in the text, alternation similar to that in *cuck*: *cack*.

women.<sup>10</sup> The similarities are so close and so striking that they may not be due to coincidence, and the conjecture of some relationship between the English forms and the German ones is strengthened slightly by the existence of a whole series of words in English of various periods which have resemblances both in form and meaning. *Cock* (in *cock-boat*), *cocker*, *cockle*, *cog* (a boat), *coggle*, *jog*, *joggle*, *shog*, *shoggle*, all have meanings which appear to center about the idea of equilibrium, of the unsteadiness of balancing with a fall imminent.<sup>11</sup> Relationships here are more obscure than one would like them to be, but in spite of the linguistic difficulties one has the impression that we are relating actual words with actual words, not hypothetical forms with other hypothetical forms; that we are dealing with actual rather than with fogily imaginative cognates.

The cucking-stool used for ducking may well have some relationship to these words for balancing; it may have been

<sup>10</sup> *Ibid.*, p. 117. Middle High German *schuc* is a variant of *shoc*. See under both in the *Mittelhochdeutsches Wörterbuch*, ed. Wilhelm Müller and Friedrich Zarncke (Leipzig, 1866). Cf. Karl Schiller and August Lubben, *Mittelniederdeutsches Wörterbuch* (Bremen, 1878), s.v. *schocken*, and Matthias Lexer, *Mittelhochdeutsches Handwörterbuch* (1873-76), s.v. *schoc*, *schocken*, *schucken* and the supplement.

<sup>11</sup> The sole exceptions are *cock* and *cog*. See *Oxford Dictionary*, s.vv. *cock* sb<sup>1</sup>, *cocker* v.<sup>2</sup>, *cockle* v.<sup>2</sup>, *cog* sb<sup>1</sup>, *coggle* v.<sup>2</sup>, *jog* v., *joggle* v., *shog* v., *shoggle* v. There has been some question whether the English *cock* in *cock-boat* is from the Romance type represented by L. *concha*, Italian *cuccia*, French *coque*, or from a Germanic root. The Romance type seems to designate a boat or ship of some dignity, such as a great ship nautilus-like with high superstructure, whereas the *cock-boat* in English is a small ship's boat broad in the beam, low, likely to bob about. Primitive Germanic \**kuggon-*, \**kukkon-* have been conjectured for English *cog* (*Oxford Dictionary*) and *cock* (W. W. Skeat, *Etymological Dictionary of the English Language*, 1924). If the words should be differentiated, Ducange (1883), s.vv. *cochetus* and 2 *concha* does not do so. *Cocker* and *cockle* mean 'to totter or oscillate from instability; said of a thing having a high centre of gravity, when it rocks so as to be in danger of falling' and would appear to be 'from a stem \**cock-* in sense 'shake.'' (O. D.) *Coggle* is 'to shake from side to side; . . . to wobble,' *jog* and *joggle* mean 'to shake to and fro,' and *shog* and *shoggle* mean likewise 'to shake or roll, to rock (a cradle), to be shaky, to get shaken out,' and for these last the O. D. invokes our series of German words, 'M.E. *shogge* probably related to O.H.G. *scac*, M.H.G. *schock*, M.Du. *schok*, M.L.G., M.H.G. *schocker* . . . G. *schockeln*, *schuckeln*.' To these might be added G. *kugel* (see Kluge, 11th ed.) and Norwegian *kokul*—Alf Torp, *Nynorsk etymologisk Ordbog* (1919). See also above, p. 130.

etymologically a balancer, as it was in fact a balancing machine much on the order of the well-sweep; but it was not used exclusively for ducking, or, to put it more accurately, something also called a *cucking-stool* was not used merely for exhibition. Here again we turn to the Continent, and again not in vain, for the Dutch *kaak*, we remember, was originally a kind of pillory, perhaps a barrel in or on which criminals were placed on exhibition. In spite of its deviations into action it remained essentially a motionless affair identical with the German *Prunger*. We cannot find an equivalent word in English for a punishment, *cag*, the etymon of *keg*, meaning simply a barrel; but there is reason to believe that if the form did exist in Middle English before 1150, it would have been engulfed in a sound-change which affected all words in the language having a long *-a-* in an accented syllable. If Old or Early Middle English had borrowed from Dutch a word equivalent to Dutch *kaak*, it would have had a long *-a-* and would have been probably *\*cāc-*, a form which, subjected to the sound-change just referred to, would have produced a form *\*cōc-*, as we saw in the discussion of the variant forms in the table, extracted for convenience on pages 34 f., above. Now, on the basis of forms occurring in the table, we have constructed a hypothetical Old English form *\*cāc-*, the forms which we used being those which are spelled in such a way as to indicate that *-ō-* was meant—forms such as numbers 1, 9, 17 in the table: *cokesstole*, *Cokesstole*, *cokeyng stoll*, all from the Middle English period. We are not whirling in a squirrel-cage here, for we start with these documented forms, consider what they would have been before this sound-change took place, and arrive at a form identical with that which Dutch *kaak* would have had if it had migrated to English before 1150. Add to this the facts that the *cucking-stool* in England was occasionally “confused” with the *pillory*—which is what Du. *kaak* was—and that the *cock-stool* of Scotland seems always to have been similar to the *pillory*, and the case becomes still stronger.

What of that unknown quantity, the *bête noir* which dogs our footsteps steadily, the *cathedra stercoris*, in view of this last surmise? *Domesday Book* was certainly compiled before 1150, when this sound-change took place—the date of the sound-change being of course approximate. In all probability it was compiled well before 1100. In any case, if we postulate an Old English form equivalent to Du. *kaak*, say the form \**cāc-*, for which unfortunately no form can be found in Old English, we have at least a possible reason for *cathedra stercoris* in the consideration that the scribe of Chester Domesday might have heard such a form, which he could easily have confused with L. *cacare*, thus producing his imaginary form, that form which has caused so much difficulty, including the misapprehension as to the original appearance of the cucking-stool, a misapprehension which is succinctly set forth by Ernest Weekley in his definition: "Instrument for punishing scolds, etc. From obs. verb *cuck*, *stercorare*, O.N. *kūka*. From its orig. form."<sup>12</sup> We have a specific example of a blundersome Latinization of Old English words which, Felix Liebermann says, "gives only syllables without any sense of their own" in *apprehensio colli* for O.E. *halsfang*.<sup>13</sup>

Dutch *kaak* is not recorded before the end of the thirteenth century, and it cannot therefore be proved that the word came to Britain as a loan from the Low Countries—the only way

<sup>12</sup> *An Etymological Dictionary of Modern English* (London, 1921). See also *The Universal Dictionary of the English Language*, ed. Henry Cecil Wyld (London, 1932). In his highly biased work *Curiosities of Popular Custom* (Philadelphia, 1898), William S. Walsh goes still further and equates this nonexistent form of the cucking-stool with the nonexistent Pope's Chair of the silly legend of Pope Joan, in spite of J. J. I. von Dollinger's having laid the ghost once and for all in *Die Papst-Fabeln des Mittelalters*, ed. I. Friedrich (2d ed., Stuttgart, 1890), pp. 1-53 (trans. Alfred Plummer, from the first edition, London, 1871; see pp. 273-279 for additional references). I have no desire to discuss the matter at length, and will say here only that having run across materials not used by Dollinger, I am still more convinced that he is right. The legend will not down, however; in novelistic manner, Clement Wood gives vent to prejudice in taking the contrary view in *The Woman Who Was Pope* (New York, 1931).

<sup>13</sup> *Die Gesetze der Angelsachsen*, II (1906), s.v. *halsfang*. As I have said before, *cathedra stercoris* was not current Latin at any time for 'close-stool.' Classical Latin has *lassanum*, *sellā pertusa*, *sellā alone*, *sellā familiarica* (later *sellā familiaris*), *lātrinā*, *forica*; Medieval Latin has these occasionally, with *gumphus*, *lassanum*, *cloaca*.

in which the retention of *-ā-* could be accounted for, since West G'c *-ā-*, retained in Middle Dutch, became *-æ-* in West Saxon, *-ē-* in Anglian and Kentish in this position. Perhaps it is of no significance here that the first Earl of Chester named by William the Conqueror was one of his numerous soldiers from the Low Countries, one Gherbod the Fleming, who held the post for but a short time because he was imprisoned on his return to Flanders to attend to his personal affairs.<sup>14</sup>

As we have already seen, these punishments were known later for bakers and wine sellers on the Continent as well as for bakers in England, the punishments, that is, of exhibition in a pillory-like structure or of ducking in the water.<sup>15</sup>

The only words which there is reason to associate with *cuck-* and variants in *cucking-stool* are English *cuck* 'to toss,' together with *chuck* and its complex of related words, and Middle Dutch *kaak*. In the case of this last, we are in good company, for no less a worthy than Samuel Johnson brushed aside other suggestions and guessed that "[the *cuckingstool*] seems nearly allied to the Teut. *kaecke*, a sort of pillory."

<sup>14</sup> George Ormerod's *Chester*, ed. Thomas Helsby, I (2d ed., London, 1882), p. 9, referring to *Ordericus Vitalis*, ed. Le Prevost (1838-55), Bk. IV, chap. 34. See Johannes M. Toll, *Niederländisches Lehngut im Mittelenglischen* (Halle/Salle, 1926), pp. 11, 55 ff. (*Studien zur englischen Philologie LXIX*), *Englands Besitzungen zu den Niederlanden bis 1154* (Berlin, 1921), pp. 38 ff. (*Historische Studien*, hgg. von E. Ebering, CXLV); J. F. Bense, *Anglo-Dutch Relations from the Earliest Times . . .* (The Hague, 1925), pp. 8 f., and *A Dictionary of the Low-Dutch Element in the English Vocabulary*, Pt. I (The Hague, 1926), pp. xv ff.; G. N. Clark, *The Dutch Influence on the English Vocabulary* (Society for Pure English, Tract XLIV, 1935); and E. G. Llewellyn, *The Influence of Low Dutch on the English Vocabulary* (London, 1936) (*Publications of the Philological Society*, XII). Note that William's wife Mathilde was a daughter of Earl Baldwin V of Flanders.

<sup>15</sup> Sometimes bakers were exhibited on a *cliae*, 'hurdle,' in England. Cf. Ducange (1883), s.v. *cliae*, and H. T. Riley, *Liber Albus of 1419* (1859), index s.v. *cliae*. This was not the murderous procedure known in France, on which see Muyart de Vouglans, *Les loix criminelles de la France* (1780), p. 65, although the two are no doubt related.

## PERSPECTIVE

INSTITUTIONS with ramifications spreading as far and wide as those considered here are not likely to arise spontaneously out of nothing. When they pass, they leave behind them more or less miscellaneous wreckage, *disjecta membra* for the curious to pore over in their efforts to solve the puzzles of their origins. If it is hardly possible to arrange all of the surviving parts in one seemly picture, can these institutions still be placed as a whole in the development of Western Europe?

At the beginning of the present century, a distinguished scholar thought so. He brings so many things together and writes so well that I quote at some length:

As rain-charms, conscious or unconscious, must be classified the many festival customs in which bathing or sprinkling holds an important place. The image or bough which represents the fertilization spirit is solemnly dipped in or drenched with water. Here is the explanation of the ceremonial bathing of the goddess Nerthus recorded by Tacitus. It has its parallels in the dipping of the images of saints in the feast-day processions of many Catholic villages, and in the buckets of water sometimes thrown over May-pole or harvest-may. Nor is the dipping or drenching confined to the fertilization-spirit. In order that the beneficent influences of the rite may be spread widely abroad, water is thrown on the fields and on the plough, while the worshippers themselves, or a representative chosen from among them, are sprinkled or immersed. To this practice many survivals bear evidence; the virtues persistently ascribed to dew gathered on May morning, the ceremonial bathing of women annually or in times of drought with the expressed purpose of bringing fruitfulness on man or beast or crop, the 'ducking' customs which play no inconsiderable part in the traditions of many a rural merry-making. Naturally enough, the original sense of the rite has been generally perverted. The 'ducking' has become either mere horse-play or else a rough-and-ready form of punishment for offences, real or imaginary, against the rustic code of conduct. The

churl who will not stop working or will not wear green on the feast-day must be 'ducked,' and under the form of the 'cucking-stool,' the ceremony has almost worked its way into formal jurisprudence as an appropriate treatment for feminine offenders. So, too, it has been with the 'ducking' of the divinity. When the modern French peasant throws the image of his saint into the water, he believes himself to be doing it, not as a mimetic rain-charm, but as a punishment to compel a power obdurate to prayer to grant through fear the required boon.<sup>1</sup>

It is several years now since I spent many a warm summer's day in the vast cool reaches of the Harvard Law Library pondering for the first time over one phase or another of the cucking-stool. During all of those years I have kept a sharp lookout for some confirmation of this attractive theory, promulgated as it was when the *Golden Bough* first cast its fitful gleams through the shadows to guide the stumbling footsteps of the folklorist. I have found no such confirmation. The plain truth seems to be that people of yesterday or today occasionally do things with which ritual has no connection whatever. To some it would appear scandalous, but it is nevertheless possible to sneeze three times in succession and not think about anything but a handkerchief. If the cucking-stool ever had an association with rain-charms or with agricultural rites of any description, "the original sense of the rite has been . . . perverted" to such an extent as to obscure it effectually from my sight. The folklorist must deal with such tremendous masses of material gathered from such widely scattered sections of the surface of the globe that the individual man or even the individual folk-group is likely to become lost in the confusion. Folklore consists indeed of "the wrecks of all the cultures of the world," to repeat Dr. Flower's eloquent phrase, but it is only the occasional wreck that for some reason or other still has life enough in it to glow in the sight of subsequent ages. The difficulty is not with the existence of sur-

<sup>1</sup> E. K. Chambers, *The Mediaeval Stage* (Oxford, 1903), I, 121 f. Cf I, 298, 307, 313, 327. It appears from the bibliographical note on p. 116 that Chambers got his knowledge of the cucking-stool from Brand-Hazlitt.

vivals, about which there can be no question in many instances, but with the pervasiveness of them and with the ways in which they are made to fit existent customs. Unless just any action is ritualistic; unless just any procession is a procession only because it is a survival of a lustration rite; unless just any use of water points to rain-charms—then, but only then, can I agree that the ducking-stool owed anything to these agricultural rites, with but this exception: if the ducking-stool be regarded as a development from the ordeal by cold water, then ritual origin can be admitted. I have already indicated that the ordeal designed to render divine interposition in human affairs possible is markedly different from the punishment of the ducking-stool. Careful perusal of the materials on agricultural rites, from those included in Frazer's *Golden Bough*<sup>2</sup>—Chambers's chief source of information—and in Mannhardt's *Wald- und Feldkulte der Germanen*,<sup>3</sup> which Frazer in turn used intensively, to more recent studies,<sup>4</sup> leaves me convinced that no relationship can be made out between these agricultural rites and the ducking-stool.

A true rain-charm somewhat obscured by the passage of time continued to exist at Exeter and its neighborhood during the nineteenth century. At the Exeter Assizes held in June, 1894, two boys, one sixteen, the other thirteen, were indicted for manslaughter. A report of the trial runs in part:

In that part of Devonshire in which the prisoners lived there was an idiotic custom practised on the first of May called 'ducking-day,' of

<sup>2</sup> *The Golden Bough* (3d ed.): *Magic Art*, I, 247, 272; II, 75 f., 81, 85, 93, 109 ff., 115 f., 151 f., 158, 205; *The Dying God*, 207 and note 1, 209, 232 ff., 236 f., 239 f., 246, 248 f., 255, 262, 265 f.; *Adonis, Attis, Osiris*, I, 237 ff., 247; II, 100; *Spirits of the Corn and of the Wild*, I, 29, 146; II, 6, 255; *Balder the Beautiful*, II, 28. Cf. *Folk-lore*, LXXXVI (1926), 76.

<sup>3</sup> Wilhelm Mannhardt, *Die Wald- und Feldkulte der Germanen*, ed. W. Heuschkel (2d ed., Berlin, 1904), I, 197, 207, 214 f., 352; II, 295, 488-492.

<sup>4</sup> Adolph Franz, *Die kirchlichen Benediktionen im Mittelalter* (Freiburg im Breisgau, 1909), I, 43-220, gives an excellent survey of Das Weihwasser. See also *Deutsche Rechtsalterthümer* (1899), II, 187 ff.; Karl Müllenhoff, *Deutsche Altertums-kunde*, ed. Max Roediger, IV (Berlin, 1920), pp. 636-642; Martin Ninck, *Die Bedeutung des Wassers im Kult und Leben der Alten* (Leipzig, 1921); Heinrich Brunner, *Deutsche Rechtsgeschichte*, ed. von Schwerin, II (1928), pp. 733 ff.; P. Saintyves, *Corpus du folklore des eaux* (Paris, 1934), Bibliography, pp. 11-48, and *Le folklore des eaux dans la région des Pyrénées* (Paris, 1935).

throwing water over people. The prisoners, with others, amused themselves on the evening of that date in throwing water over a fence on to a road some distance below, where there was a passing carriage, containing the late Dr. Twining, and Dr. Hellier, who were being driven by a servant. The water thrown over the fence frightened the horse, which collided with a fence. More water was thrown, with the result that the horse started off, the carriage was thrown over, and its occupants were thrown out. Dr. Twining sustained an injury to his ankle, which, a few days later, necessitated the amputation of the leg at the thigh. As the outcome of that amputation, the doctor died.

The decision was that the younger boy be let off and the older boy be discharged on his father's surety.<sup>5</sup> This custom, which seems to have been well known at Exeter, is reported at the same place in about the year 1819.<sup>6</sup> I think that the reader will agree with me that the atmosphere of this, as of the ceremonies of crying the neck, of harvest home, of holy wells, and so on, associated soundly with rain-charms, is very different from that surrounding the *cucking-stool*.

We might close with the novel use of the instrument by the love-lorn Sparabella, John Gay's heroine, frenzied through unrequited love—

I'll speed me to the pond, where the high stool  
 On the long plank hangs o'er the muddy pool,  
 That stool, the dread of ev'ry scolding quean.  
 Yet, sure a lover should not dye so mean!  
 There plac'd aloft, I'll rave and rail by fits,  
 Though all the parish say I've lost my wits;  
 And thence, if courage holds, my self I'll throw,  
 And quench my passion in the lake below.

<sup>5</sup> *Transactions of the Devonshire Association*, XXVII (1895), 72 f. Cf. *ibid.*, XXIII (1891), 354, 356, 358, 367 (in F. T. Elworthy's article on *Crying the Neck*), and *British Calendar Customs. Scotland*, ed. M. MacLeod Banks, I (1937), 84 [Publications of the Folk-Lore Society C].

<sup>6</sup> *William Hone's Year Book of Daily Recreation and Information* (London, 1832), p. 318, under May 29. I use the reprint of 1878. The letter to Hone is dated March, 1831, and the correspondent says that he had left Exeter more than a dozen years before. For additional instances of water-throwing, see A. R. Wright and T. E. Lones, *British Calendar Customs*, I (1936), 131 f., 144, 188 (Publications of the Folk-Lore Society XCVII).

Sparabella's courage did not hold, the fatal game of seesaw was put off until another day, and we shall emulate the heroine by not ending here but striving once again to place the cucking-stool.<sup>7</sup>

Many scholars have convinced themselves that corporal punishments can be traced back to human sacrifice of ritualistic nature.<sup>8</sup> The materials are not so clear or numerous as to exclude the play of subjective opinion. Whether diminishing severity of punishment in England points in this direction is hard to establish, in the first place because it may be questioned whether severity does diminish during the later Middle Ages. Bracton tells us that whereas they used to hang men guilty of rape, "now they mutilate them."<sup>9</sup> English usage was very changeable at this period, with periods of mildness followed by periods of great severity, the will of the sovereign apparently playing a greater part than custom.<sup>10</sup>

In precipitation from a cliff in England, a punishment laid

<sup>7</sup> Gay's *The Shepherd's Week*, The Third Pastoral; Wednesday, or, The Dumps. Some eighteenth-century editions have an engraving of the cucking-stool.

<sup>8</sup> Hermann Usener, for instance, in *Italische Volksjustiz, Kleine Schriften*, IV (Leipzig and Berlin, 1914), 356-357, *Rheinisches Museum* LVI (1909), p. 1. Access to the extensive literature can be had through Karl von Amira's important work *Die germanischen Todesstrafen* (München, 1922) (*Abhandlungen der Bayerischen Akademie der Wissenschaften, Philosophisch-philologische und historische Klasse* XXXI, 3, Abhandl.), and Rudolf His, *Geschichte des deutschen Strafrechts bis zum Karolina* (München and Berlin, 1928), pp. 92, 94 (Handbuch der mittelalterlichen und neueren Geschichte, Abt. III; Verfassung, Recht, Wirtschaft). Plain traces are referred to by E. von Kunsberg, *Rechtliche Volkskunde* (1936), p. 171; and see von Schwerin's article in Hoops's *Reullexikon*, IV (1918-1919), 328 ff. Much valuable material on the later historical stages of the process is discussed in a neglected paper by Joseph L. L. Ortolan, "Les sources de notre ancien droit pénal," in *Revue de législation et de jurisprudence*, XXXI (1848), 21-52, 161-199. Maximilien Robespierre wrote a prize essay on the subject—*Discours . . . sur l'origine [des] peines infamantes . . .* (Amsterdam, 1785), reprinted in Pt. I, ed. E. Déprez of Robespierre's *Oeuvres complètes* (Paris, 1910) (Société des Etudes Robespierriennes). Of philosophical interest are Karl Binding's lectures, *Die Ehre und ihre Verletzbarkeit* (Leipzig, 1892) (several times reprinted), and *Die Entstehung der öffentlichen Strafe im germanisch-deutschen Recht* (Leipzig, 1909); cf. also Edward Westermarck, *The Origin of the Moral Ideas*, I (1924), chaps. xiv ff.

<sup>9</sup> *De legibus*, lib. III, *De Corona*, cap. xxviii, § 1, *de appellis de raptu vergine*

<sup>10</sup> Pollock and Maitland (2d ed.), II, 460 ff. The most terrible cruelties in punishment came later; see Luke Owen Pike, *A History of Crime in England* (2 vols., London, 1873-1876).

down in the *Quadripartitus*, of the second quarter of the tenth century, for female thieves, von Amira perceives a survival of earlier ritual.<sup>11</sup> Having been thrown from a cliff, the criminal was drowned, another occasional punishment which von Amira regards as having its origin in sacrifices to the spirits of the waters, a strong piece of evidence being the passage in the *Lex Frisionum* ordering that profaners of shrines be led to the seashore and there be immolated to the gods whose temples they have desecrated.<sup>12</sup> In view of the ceremonies connected with designating the consecrated one as an offering to the water-spirits, it seems possible that the judgment of cold water, the *judicium aquae frigidae*, may be related, although von Amira does not include it in his comprehensive survey. We move most uncertainly and hesitantly here in the times before the West Germanic tribes migrated to Britain, virtually then in prehistoric times. It would be difficult to maintain that the *judicium aquae frigidae* is purely Germanic in origin, for the Romano-Christian line of force knew it also. The fact that *judicium* bore the double connotation of 'punishment' and 'judgment' may have facilitated a transfer from the ordeal to the punishment.

When used for ducking, theucking-stool seems to have been pretty generally restricted to women. Perhaps there is a little support to be found here in that the capital punishment of women during the Middle Ages was commonly carried out in one of three ways—by drowning, by burial alive, and more rarely by burning.<sup>13</sup> Burial alive, often accomplished by suffocating the victim in a swamp, is the punishment referred to by Tacitus in the twelfth chapter of the *Germania*—one of those concerning which Tacitus remarks, "Distinctio poenarum ex delicto," a statement which may be said to epitomize one whole aspect of medieval punishment, with

<sup>11</sup> Liebermann, *Die Gesetze der Angelsachsen*, I, 172; von Amira, *op. cit.*, pp. 136 f., 167 f.; Gaston Girard, *Art und Form der Strafe bei den Angelsachsen* (Diss., Zürich, 1920), pp. 46-48. To me it seems an echo from Roman criminal law.

<sup>12</sup> Von Amira, *op. cit.*, pp. 140-143, 198 f.

<sup>13</sup> *Ibid.*, pp. 179 f. On the first and last occurrences in England before the Conquest, see Girard, *op. cit.*, pp. 40 ff., 46 f.

both Dante and legal maxims seeming to echo it.<sup>14</sup> The punishment of burial alive mentioned by Tacitus was used for men—for soldiers; but for men who behaved like women. At least this is one interpretation of the enigmatic passage:

ignauos et imbelles et corpore infames caeno ac palude iniecta insuper et crate mergunt.<sup>15</sup>

Bodies of persons executed in this manner have not been found in England, the nearest being a solitary example in Ireland.<sup>16</sup> In any case, suffocating a woman or womanish man in a swamp does not correspond closely to drowning a woman, or ducking her in aucking-stool.

A more attractive speculation emerges when we reclassify some of the punishments already studied. If we draw together all of the punishments for violating assizes of weights and measures, the materials appear in a new light. Following chronological order, we may set forth this group thus:

1. At Chester before 1100, a man or woman making bad beer was punished by the *cathedra stercoris*.
2. In Scotland, between 1124 and 1153, the *brasiatrix* or ale-wife was punished by the *cokestole*.
3. At Bury St. Edmunds, Suffolk, between 1187 and 1200, a person using false measure for bread or grain was punished by the *trebuchet*.

<sup>14</sup> Perchè sia colpa e duol d'una misura, *Purg.* xxx. 108. Two pertinent maxims are, *Punitur in eo, in quo quis peccat*, and *Puniri debet occulte, occulce peccans; et qui deliquerit publice, publice etiam puniri debet*.

<sup>15</sup> Von Schwerin interprets the passage thus in Hoops's *Reallexikon*, I (1911-13), 629, with refs., and so does Jan De Vries in personal conversation. Von Amira's reference to I. Telting, *Over de Sporen van Oudgermaansch Strafrecht in de Germania van Tacitus*, which he says is "in der Zeitschrift *Themis*" is actually a separate monograph of 46 pages printed at Workum in 1862. The "corpore infames" passage is carefully studied in pp. 24-28. Illustrative examples of analogous punishments are collected by various writers, e.g., in Grimm's *Deutsche Rechtsaltertumer*, II (4th ed., 1899), 274-277, esp. pp. 276 f., in Karl Mullenhoff's *Deutsche Altertumskunde*, IV, ed. Max Roediger (2d ed., Berlin, 1920), and in B. Sijmons's commentary on the *Poetic Edda* (1931), pp. 323 and p. vii (Germanistische Handbibliothek VII. 3.2). The text of Tacitus I quote from the critical edition by Rodney Potter Robinson (Middletown, 1935) (Philological Monographs published by the American Philological Association, V).

<sup>16</sup> Hoops, *Reallexikon*, III (1915-16), 238-400; cf. I, 629.

4. At Preston, Lancs., temp. King John, a "burgensis in misericordiam de pane et ceruisia" was punished by the cuckestole.
5. In Scotland, between 1200 and 1235, the Brasiatrix was punished by the tumbielum.
6. At Strassburg, between 1214 and 1219, and in 1270, persons measuring wine unjustly were punished by the *scupha*. The verb *schüpfen* is used also.
7. At Brandenburg, about 1240, buying or selling falsely was punished by the *scupstol*.
8. At Farnham, in 1247, Brasiatori were punished by the tumbrelum.
9. In England, generally, the Statutes of the Realm of uncertain date (1270?) punished the Braciatrix by the trebuchetum uel castigatorium.
10. Again, the Statutes of the Realm (1270?) punished brasiatrices by the judicium tumbrelli.
11. At Winchester, about 1275, *le pestur* was punished by the juwise.
12. At Augsburg, in 1276, bakers were ducked. The verb *schuphen* is used.
13. At Zurich, in 1286, a baker was ducked. The noun *schnelen* is used. The baker cuts himself out of a basket and falls into water.
14. In England, in the thirteenth century, a [brasiatrix] was punished by the tumberellum.
15. At Kildare, about 1308, mention is made of brewesters being punished by the coking-stol. Ducking is implied.
16. At Regensburg, about 1320 and in 1326, bakers were ducked. The expression used is "geschupft werden."
17. At Kilkenny, in 1333, the Braciatrix was punished by the "swyngligstol uel castigatorium."
18. At Vienna, in 1340 or before, bakers were punished by being ducked. The verb *schupfen* is used.
19. In Silesia, in 1346, bakers were placed in a basket (and presumably ducked: "uff den korp gesaczt").
20. *Piers Plowman*, composed during the last half of the fourteenth century, says that brewsteres were punished on pyning-stoles.
21. At London, in 1419, persons falsifying measures by putting pitch in them were punished by the thew.
22. At Montgomery, "temp. Henry II" (really about 1486?), the Pandoxatrix was punished by the Goggynstole.

23. At London, in 1468, the brewer was punished by the Cockyng-stole and Pillory.
24. At Ayton and Rushton, Cheshire, in 1499, right was claimed to punish braciatrices by the tumbrellum.
25. In England, about the end of the fifteenth century, an ale-wife was punished by the cukkyng stole.
26. In the Tyrol and at Freiburg im Breisgau, before 1581, persons giving false weight or measure are said to have been put to death by drowning.
27. Coke says (1644) that Brewers, Bakers, etc., are to be punished by the Pillory and Tumbrel.<sup>17</sup>

The early dates here are striking. Three are before 1200, the next eleven are before 1300, and the next six after that are before 1400. The distribution takes us across the Channel to Germany. Now that we have an idea that the tumbrel, the trebuchet, and the schupfe were all "balancers" used to duck people, we fancy that we can perceive a uniform idea operating when Germanic peoples wanted to punish violators of the regulations pertaining to weights and measures. We are struck by the persistence in this grouping, as elsewhere, of that sort of apparatus which in its operation, occasionally even in its nomenclature, causes us to think of the scales or balance consisting of the simple arm, supported in the middle, with pendant pans. The *swynglistol*, we have seen, may have been a balancer. There is no need to repeat here the discussions of these various terms made on previous pages. The reader will see at once that again the *cathedra stercoris* is very much alone. To a limited extent, my impression is confirmed that it exists only through some accident and is an incorrect form. If this

<sup>17</sup> The sources of this material, as well as discussion of the terms, will be found in the present monograph as follows: 1. P. 29. 2. P. 23. 3. P. 57. 4. P. 19. 5. P. 64. 6. P. 86. 7. P. 87. 8. P. 62. 9. P. 57. 10. P. 62. 11. P. 72. 12. P. 88. 13. P. 85. 14. P. 64. 15. P. 16. 16. P. 88. 17. P. 47. 18. P. 88. 19. P. 89. 20. P. 74. 21. P. 69. 22. P. 56. 23. P. 21. 24. P. 69. 25. P. 34. 26. P. 32.

The Report from the Committee appointed to inquire into the original Standards of Weights and Measures in this Kingdom, by Lord Carysfort, 26 May, 1758 and 11 April, 1759, to be found at pp. 411-463 of *Reports from Committees of the House of Commons*, reprinted by order of the House, Vol. II (1803), gives an interesting survey of the subject.

be so, then there is no reason to entertain further the dark suspicions of the cucking-stool as a privy chair which have been haunting the minds of scholars since the middle of the seventeenth century.

Yet more striking is the uniformity, in England and Germany, during some centuries from about 1100, of punishing violations of the assizes of weights and measures by "balanciers." Is it possible that we have here one of those "spiegelnde Strafen," as German historians of the law call them, one of those punishments which reflect as in a mirror the nature of the crime punished? Armed insurrection may be punished by the loss of the hand raised against authority. The blasphemous tongue may be torn out. Often these are occupational, the knight being compelled to carry his armor or his saddle. That the cheating baker, who was expected to weigh out carefully the ingredients for his loaves, should be punished on a large pair of scales in the presence of his victims, seems entirely consonant with this aspect of medieval punishments.<sup>18</sup>

<sup>18</sup> In his *Inferno*, Dante follows this scheme in general, as J. Ortolan has demonstrated in *Les pénalités de l'Enfer de Dante* (Paris, 1873), pp. 111-118. M. Ortolan's remarks on punishment by analogy are worth citing (p. 40). "L'analogie, esprit des enfants, esprit des peuples dans leur premier âge, esprit des masses peu éclairées, s'en prend, en fait de pénalité, à tout ce qui a pu figurer dans le crime: la personne du criminel, les parties de son corps mises en jeu dans l'action, les instruments, les modes d'exécution, la personne lésée, la nature du mal produit ou des droits violés, les mille autres éléments du drame, et elle introduit dans la peine le symbole, c'est-à-dire l'image, la représentation matérielle ou idéale de quelques-uns de ces éléments, poussée à l'extrême: les représailles, le talion . . . ." With this admirable statement I agree up to the last point, that punishment by analogy is the same as retaliation or talion. It is plain here, for instance, that punishing a fraudulent baker by hanging him up in a pair of scales is not the same in principle as slaying a man who has slain another, as gouging out the eye of the person who has gouged out the eye of another man, and so on. Moreover, yet a different aspect of talion in the Middle Ages is not present in punishment by analogy—"the infliction of the same penalty on the accuser who failed to prove his case as would have fallen upon the accused if found guilty." (OD) Cogently, M. Ortolan points to the wrathful submerged in mud in the fifth circle of Hell (Inf. viii). On the matter, see also James Williams, *Dante as Jurist* (Oxford, 1906), pp. 34 f., == *Law Magazine and Review*, fourth series, XXII (1896-97), 100 f.; Jeremy Bentham, *Principles of the Penal Code*, Pt. III, chap. vii; Grimm, *DRA* (1899), II, Bk. V, cap. iii, pp. 254-345; *Die peinliche Gerichtsordnung Kaiser Karls V: Constitutio Criminalis Carolina*, ed. J. Kohler and Willy Scheel

If we have an ancient Germanic punishment for violators of the rules concerning weights and measures peering at us through the shadows of antiquity, it is possible that the origin of the cucking-stool is to be sought here. The transfer to scolds would then have come about later, when the established punishment for bakers became regularly paid fines (and thus gradually taxes), and the need to punish scolds was more and more insisted upon by theologians.

#### CONCLUSIONS

The indulgent reader who has persevered to this point will not expect me to decide arbitrarily on one specific thing as the origin of the cucking-stool at the price of excluding all other possibilities. Certainly, he will agree, the presence of so many abstruse words in various languages all pointing directly at the idea of balancing cannot be due to mere coincidence. Probably the punishment of publicly ducking in a pair of balances an offender against the customary statutes of weights and measures is the earliest ascertainable origin of the cucking-stool. Extension of this dramatic punishment to other offenders need not obscure this or lead one's thoughts at this point to any form of ritual, agricultural or other. The particular extension which interests us here, that to persons who offend by their tongues—blasphemers in Italy and France, scolding women in England—is due to the scriptural warning that the tongue is a fire. What is more efficacious than cold water for extinguishing a fire? Before the tongue set on fire the whole course of nature, submerge it; and hence scolding women were plunged over head and ears in the water. The sins of the tongue were frequently regarded as branches of the sin of Wrath; and Dante shows us the wrathful submerged.

Attractive also to me as perspectives in which to set the cucking-stool in its two functions of exhibition and ducking are the Dutch *kaak* and the *judicium aquae frigidae*, with the hypothetical doublets *cuck* and *chuck*, 'to toss.' No amount of

(Halle/Saale, 1900), articles 107, 108, 123, 159, 198 (Die Carolina und ihre Vorgängerinnen, I).

argument is likely to prove that these are right, but as more evidence accumulates, it can be easily brought to bear on the materials which I have collected and I hope clearly set forth. Examination in the manuscripts, by a competent palæographer, of each item in the table of forms (pp. 34-35) might provide us with a more easily classifiable set of forms.

We can be sure of the fucking-stool only if we stand afar from it. Then it takes its place easily in that timeless perspective provided by the relations between men and women, more particularly in that admiring, indulgent, and at once alarmed fascination with which the presumably superior masculine eye has always regarded the daughters of Eve, from the symbolical days in the garden to Xantippe, and the *Thesmophoriazusae* and *Ecclesiazusae* of Aristophanes, the Ψόγος γυναικῶν of Stobaeus, the Wife of Bath, "Katherine the Curst," votes for women, WACs, WAVEs, WAFs—and what next?



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